Saturday, 17th September, 1949

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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Volume IX—30th July to 18th September 1949

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 17*th September* 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

ABOLITION OF PRIVY COUNCIL JURISDICTION BILL

Mr. President : The first item is the Bill. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Mr. President, Sir, I move :

"That the Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions, introduced on the 14th September 1949, be taken into consideration by the Assembly".

I would like to say just one or two words and inform the House as to why this Bill has become a necessity and what the Bill proposed to do in substance. The necessity for the Bill arises because of two circumstance. One is the provision contained in clause (3) of the proposed Article 308. This article 308 is to be found in the midst of what are called transitional provisions, Clause (3) of article 308 provides that—

"On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in respect of any decree or order of any court within the territory of India, including the jurisdiction in respect of criminal matters exercisable by His Majesty by virtue of His Majesty's prerogative shall cease, and all appeals and other proceedings pending before His Majesty to Council on the said date shall be transferred to and disposed of, by the Supreme Court.' "

which means that on the date on which the Constitution comes into operation, the jurisdiction of the Privy Council will completely vanish.

The second circumstance which has necessitated the Bill is that it is proposed that this Constitution should come into operation sometime about the 26th January 1950. The effect of these two circumstances is that the Privy Council will have no jurisdiction to entertain any appeal or petition after the 26th January 1950, assuming that that becomes the date of the commencement of the Constitution. But what is more important is this that the Privy Council will not even have jurisdiction to deal with and dispose of appeals and Petitions which may be pending before it on the 26th January 1950. Now taking stock of the situation as it will be on the 26th January 1950 the position is this. There are at present seventy civil appeals and ten criminal appeals ending before the Privy Council. The Calendar of cases which is prepared or the next sitting of the Privy Council has set down twenty appeals for hearing and disposal. It is also a fact that that is probably the only sitting which the Privy Council will hold for the purposes of disposing of the Indian appeals before the date on which the Constitution comes into operation.

According to the information which we have, this list of cases which is prepared for hearing at the next session of the Privy Council contains about twenty appeals, which means that on the 26th January 1950, sixty appeals will remain pending undisposed of; and the question really that we are called upon to consider is this. What is to be done with regard to these sixty appeals which are likely to remain pending before the Privy Council on the 26th January 1950?

[The Honourable Dr. B. R. Ambedkar]

There are, of course, two ways of dealing with this matter. One way was to continue the jurisdiction of the Privy Council and dispose of all the appeals that are now pending before it. That was the procedure that was adopted in the Irish Constitution by article 37 whereby it was stated that nothing in their Constitution would affect the jurisdiction of the Privy Council to deal with matters that may be pending before them on the date of the Constitution. But as I pointed out, in the proposed article 308 clause (3), we do not propose to leave any jurisdiction to the Privy Council. We propose to terminate the jurisdiction of the Privy Council on the 26th January 1950. The only way out, therefore, is to provide that the jurisdiction of the Privy Council shall terminate, that their jurisdiction shall be conferred on the Federal Court and that they shall transfer all the cases which are pending before them on the 10th October, except the twenty cases to which I made a reference earlier to the jurisdiction of the Federal Court. This is what the Bill does.

Now, Sir, coming to the specific provisions of the Bill, it will be noticed that clause 2 abolishes the jurisdiction of the Privy Council over all courts in the territory of India. Clause 3 abolishes the jurisdiction of the Privy Council over the Federal Court, and clause 5 is the converse of clauses 2 and 3, because it proposes to confer the Privy Council jurisdiction on the Federal Court. Clause 4 deals with the matters that are pending before the Privy Council. Although clause 5 confers the Privy Council's jurisdiction on the Federal Court, clause 4 is a saving clause and saves the jurisdiction of the Privy Council in certain appeals and petitions which are pending before it. They may be classified under four heads : (1) Appeals and petitions in which judgment has been delivered, but Order in Council has not been made before the 10th October, (2) appeals entered in the Cause List for Michaelmas sitting which begins on the 12th October, (3) petitions which are already lodged and may be lodged before the 10th October, and (4) appeals and petitions on which judgment has been reserved by the Privy Council although the hearing has been completed. In clause 6, all those matters which do not come under clause 4 stand automatically transferred to the Federal Court even though they may be pending before the Privy Council. Clauses 7 and 8 are mere matters of construction.

While curtailing the jurisdiction of the Privy Council it is felt that it is desirable to repeal and amend certain sections of the Government of India Act, 1935 which are necessary as a matter of consequence and which are also necessary to remove some of the anomalies in the Government of India Act with regard to the jurisdiction and powers of the Federal Court. As I have said, clause 3 repeals Sections 208 and 218 of the Government of India Act which deal with the Privy Council and appeals from the Federal Court, and appeals from a court outside India. Both these changes are consequential.

It is proposed to amend Section 205 which deals with the appellate jurisdiction of the Federal Court, and Section 209 which deals with the form of judgment and the drawing up of decrees, 210 which deals with jurisdiction of the Federal Court over other courts and Section 214 which deals with jurisdiction of the Federal Court over courts outside India.

It is proposed, therefore, by these consequential and other necessary amendments to make the jurisdiction of the Federal Court complete and independent. This measure, undoubtedly, is an interim measure, because these powers will last only up to the 26th January 1950 when the Constitution comes into operation. On the 26th January 1950, the powers of the Federal Court will be those that are set out in the Constitution.

Sir, I move.

Mr. President : The motion is:

"That the Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions, introduced on September 14, 1949, be taken into consideration by the Assembly."

Does any Member wish to say anything about it ?

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, I have great pleasure in supporting the motion moved by Dr. Ambedkar. It is but meet that the jurisdiction of the Privy Council which is the symbol of our judicial slavery should end as soon as possible. I do not understand if there is any connection between the declaration of our country as a Republic and the Privy Council. When the Independence Act was passed, that was indication enough for us that we should abolish the jurisdiction of the Privy Council. I understand that in Canada also, while the connection is as good as before, attempts are being made to sever that connection. I read in today's "Hindustan Times" as follows :

> "In the speech from the throne at the opening of Canada's 21st Parliament, yesterday the Governor-General Viscount Alexander announced that two Bills would be introduced aimed at cutting Dominion ties with West minster.
>
> One would be a Bill to amend the Supreme Court Act so that the Supreme Court Act so that Supreme Court of Canada would become the final court of appeal for Canada."

Therefore, I do not understand why this very thing which we are doing today could not have been done much earlier. When in 1947 a Bill was placed before the legislative part of the Constituent Assembly for the enlargement of the powers of the Federal Court, Ajmer-Merwara was not included in the list of those High Courts from which appeals to the Privy Council were to be, substituted in future to the Federal Court, as Ajmer-Merwara was a Judicial Commissioner's court. But at that time many of us indicated that steps should be taken at once to see that this jurisdiction of the Privy Council was abolished.

Similarly in regard to criminal cases we have been trying for the last two years to see that the jurisdiction of the Privy Council is taken away. In the Legislative Assembly we brought in a Bill—Dr. Hari Singh Gour gave the notice and I introduced the Bill—and subsequently it was referred to Select Committee at my instance. But before the Select Committee it was found that that part of the Constituent Assembly had no power to enact a measure like that. therefore, before the last session of the Constituent Assembly was over, Mr. Naziruddin Ahmad and I sent in a Bill, for abolition of powers of the Privy Council, to this House before August. We wanted that this jurisdiction should be abolished all at once. But unfortunately no notice was taken of that Bill. I am very glad that after all, now, on the last day of the session, this Bill has been brought.

In welcoming this Bill I would like to say that this is not the only point, namely, that our judicial slavery ends, about which we were so impatient. But I congratulate the Drafting Committee for their draft which is certainly much better than the draft which I placed for their consideration. This might also be one of the reasons why they have taken so much time in considering the question. The draft, as it stands, consists of two parts; one relates to the abolition of the jurisdiction powers of the Privy Council and the other relates to the conferment of the corresponding jurisdiction on the Federal Court. I am very glad that clause 5 finds a place as the subject matter of it did not as a matter of fact find a place in article 308. Article 308 only operates to abolish the jurisdiction of the Privy Council. But it failed

[Pandit Thakur Das Bhargava]

to confer the jurisdiction of the Privy Council on the Federal Court. Now, clause 5 seeks to place that jurisdiction which was enjoyed by the Privy Council on the Federal Court. The jurisdiction enjoyed by the Privy Council in regard to criminal matters was a very special kind of jurisdiction which could only be enjoyed by the Privy Council of a State in which there was monarchy. Now, the words in clause 5 are "the same jurisdiction to entertain and dispose of Indian appeals and petitions as His Majesty in Council has, whether by virtue of His Majesty's prerogative or otherwise". So under clause 5 these powers have now been transferred to the Federal Court.

When I come to my amendment I will have occasion to say how this is different from the ordinary jurisdiction in regard to appeals etc. At this stage I need not dilate upon that. The only point that I want to bring to your notice in this connection is that whereas in clause 9 we have got some statement of the powers of the Federal Court on the civil side, there is no corresponding statement in regard to the criminal powers of the Federal Court after they have been conferred on it under clause 5. And I have tried to fall up that lacuna.

Similarly, in regard to clause 4 relating to the exceptions which have been made so far as the Privy Council jurisdiction is to continue for certain appeals, my humble submission is that as a matter of fact we should not allow any jurisdiction to continue in the Privy Council in regard to cases in which the Privy Council has so far done nothing. My opinion is that cases in which the Privy Council has done nothing should be transferred at once to the Federal Court. After all a petition for appeal consists of two main parts. Firstly the petition is lodged mechanically with the Registrar and the Registrar has done nothing to it except the formal record of the lodgment of the appeal. Then at the first hearing the question is gone into and sanction is accorded. It is but meet that in regard to these cases in which the appeals have only been lodged, the entire proceedings should take place in India because nothing has been done in respect of them in the Privy Council so far.

In regard to cases where something has been done, where they have been finally put before the Privy Council, where—I can understand—people have spent lakhs of rupees on counsels etc., those cases—twenty of them, as has been indicated by Dr. Ambedkar—may be heard by the Privy Council. But there is absolutely no reason why the cases in which only the petitions have been lodged before the Privy Council should be allowed to be gone into by the Privy Council and the question of sanction or ban decided. I for one do think that so far as the legal aspect of the matter is concerned we should see that the entire proceedings in those cases take place in India. Clause 5(2) says that even if the sanction is accorded, further proceedings are to take place here. But I understand that the more legal and more just thing is that the entire proceedings should be had in India.

In regard to pending cases, so far as any cases remain which are not disposed of by the Privy Council and which are not taken cognizance of, in the sense that they are not taken and finished in this session in 1949, I hope all these unfinished cases will come here, because there is no object in keeping any connection with the Privy Council any further. I have put in an amendment, but at this stage I do not want to take up the time of the House. Sir, I support the motion before the House.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, I welcome the motion for consideration of the Bill. The matter has already been unduly delayed, but after all I am happy that it has come at last.

I have two points to submit at this stage. One is the question as to what would happen to those appeals which were appeals against a decision of the Federal Court. This Bill absolutely prohibits the Privy Council from

deciding them and they must lapse. I submit this will cause much hardship. I submit that appeals which have been admitted by the Privy Council, on the ground of leave having been given by the Federal Court or special leave given by the Privy Council itself, should not be killed in this fashion because when the appeals were lodged and were admitted the appellants acquired something like a vested right in the sense that they had a right to be heard and their contentions decided in a formal manner. This right is being taken away. Many must have spent a lot over them. This will create real hardship.

The other point to which at this stage I wish to draw the attention of Dr. Ambedkar is clause 10. With regard to clause 10 the procedure laid down in the Civil Procedure Code is retained. Those provisions are sections 109, 110, 111 of the Code of Civil Procedure and order XLB of the same Code. So far as these sections are concerned, they will now be, by virtue of this Bill, entirely obsolete. They deal with certain preliminaries relating to appears to the Privy Council from the judgment of the High Court. Those provisions are entirely covered by an earlier enactment of the Central Legislature passed in 1941 that is, Act XXI of 1941, and also by clause 9, sub-clause (2), of the present Bill. I submit that clause 10 of the Bill will result in a clash between the provisions of the Civil Procedure Code and Act XXI of 1941. By the Adaptation Order of 1937, section 111-A and Rule 17 to order XLV of the Civil Procedure Code were added. But by the Act of 1941, section 111-A of the Civil Procedure Code and Rule 17 of Order XLV were repealed and by that Act the Federal Court was enabled to make their own rules. By virtue of that power, the Federal Court has already made rules and they would cover procedural matters relating to appeals. In the face of those rules which are self-complete, there would be a clash between those rules and the provisions of the Code of Civil Procedure. I should like to ask the honourable Member to consider the desirability of retaining clause 10. I shall give the details when it comes up, but I merely draw attention to the unnecessary character of this clause.

Sir, generally I support the Bill.

Shri B. N. Munavalli (Bombay States) : Mr. President, Sir, the Bill as it stands has been very carefully worded and has met all the difficulties that were being felt up till now. The Honourable Pandit Thakur Das Bhargava stated that all those appeals which have not been heard in the Privy Council should be transferred to the Federal Court. But we must look to the procedure of the Privy Council also. In the case of certain appeals which have already been registered, it is but natural that certain work with regard to them must be attended to there. So, although the appeals are not heard by the Privy Council, still it stands to reason that the appeals which have been registered should be left with the Privy Council for decision. But now when the Bill comes into force on the 10th of October 1949, all the appeals will vest with the Federal Court. Also, if there are any appeals to the Privy Council which the High Court has certified, provision has been made there also for appeal to the Federal Court. Under these circumstances, I do not think there is any reason why there should be any changes in the Bill as piloted by Dr. Ambedkar.

My honourable Friend Mr. Naziruddin Ahmad said that the right of the persons who might have appealed against the decision of the Federal Court to the Privy Council had been taken away. But really speaking it is not so. The fact is that if they have already gone in appeal to the Privy Council and if those appeals have been registered, they will be heard by the Privy Council. That being the case, there is no grievance whatsoever. The Bill provides for every contingency and meets the grievances that were left unredressed up till now. So I am in agreement with the Bill and wholeheartedly support it.

Dr. Bakhshi Tek Chand (East Punjab: General) : Mr. President Sir, I rise to support the proposition that has been moved by Dr. Ambedkar and to oppose the amendment of my honourable Friend, Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava : No amendment has not been moved yet.

Dr. Bakhshi Tek Chand : Oh, the amendment has not been moved yet.

Today is, if I may say so, a memorable day in the history of this country. It is exactly after 175 years that the judicial connection of this country with England comes to an end. It was, Honourable Members may be aware, in 1774, when, by an Act of Parliament passed in the previous year, a Supreme Court was established at Fort William in the Province of Bengal. By that Act provision was made for taking appeals from the judgments, decrees and orders of the Supreme Court to His Majesty's Privy Council in England. In 1800 a Supreme Court was established in Madras and in 1823 another Supreme Court in Bombay, and appeals from these three Courts were regularly taken to England. In 1883 the British Parliament passed the Judicial Committee Act by which the Privy Council appointed a Committee only, to hear and dispose of appeals from India and the colonies, consisting only of persons with judicial or legal experience from amongst its members. From 1833 up to now this jurisdiction has been exercised by that august body.

During this period, if I may say so, the Privy Council has been a great unifying force in the judicial administration of this country, and I would like, with your permission to express our high appreciation of the work which it did. At a time when there were no Indian Judges in the High Courts, and then the number of Indian lawyers was very limited, the Privy Council unravelled the mysteries of Hindu Law, it enunciated ten principles of Mohammadan law, and formulated with clarity the customs which were prevalent in this country. Their Lordships of the Privy Council have from time to time elucidated the various Indian laws with an absolutely detached mind. They have laid down the principles on which the judicial administration of the country was based. No doubt there have been lapses and mistakes, occasionally but, on the whole, the Privy Council has been a great unifying factor and on many occasions has reminded the courts of the country of those fundamental principles of law on which the administration of justice in criminal matters is based. This long connection, in the fullness of time is coming to an end, as it must, now that we have attained freedom. That is the first observation which I have to make.

With regard to the provisions of the Bill, we have, as has been pointed out, about eighty or to be more exact, seventy-nine appeals pending before the Privy Council. Of these, thirty-one appeals in civil matters have been brought as a right and the records relating to those appeals had been received in England before 1st February 1948 when the Federal Court enlargement of jurisdiction came into force. There are thirty-eight civil appeal from the High Court in India in which special leave has already been granted and the appeals admitted for hearing before the Privy Council. With regard to criminal matters there are only ten appeals in which special leave has already been granted. As honourable Members are aware, no appeal in a criminal case lies to the Privy Council as of right. It is only by special leave of their Lordships that criminal matters can be heard there. In ten cases, such leave has already been granted and the cases are ripe for hearing. This is the entire list of pending cases though out of these seventy-nine cases, records of fifty-two cases have already been received in England and petitions of appeal leave been lodged in forty-one.

Another branch of cases which could under the existing law, go to the Privy Council are appeals from the Federal Court in India in matters in which interpretation of the Government of India Act, 1935, or of the Orders in Council made thereunder or of the independence Act, may be involved. No appeal from the Federal Court is, however, pending at present before the Privy Council. Therefore this question does not arise.

Out of these seventy-nine appeals, it is likely that about twenty only will be heard before the twenty-sixth of January next year when, it is expected that the new Constitution will come into force. If even these cases are brought over to India at this stage it will be a very great hardship to the litigants who have spent thousands of rupees in having the records printed and sent up to England, in engaging solicitors and briefing counsels there. Therefore, it is a very salutary provision that as many of them as can be disposed of by the 26th of January, should be allowed to be heard and decided there. Those which are not finished by that time will automatically be transferred to India.

The other matter relates to criminal appeals. These are cases, in which as I have said already special leave has been granted. They are mostly cases in which the appellants are under sentence, of death or transportation for life or other long terms of imprisonment. The trials of these persons were held long ago and after a lengthy process, their cases have reached the Privy Council and are ready for being disposed of shortly. It will be very undesirable—if I may say so, cruel—to bring those cases back to India for final disposal here, and delay the final decision for several months more and put the appellants to additional expense

There is a third class of cases with regard to which my honourable Friend, Pandit Thakur Das Bhargava has made some remarks. These are cases in which petitions for leave to appeal in criminal matters have been lodged before the Privy Council but such petition have not been heard yet. Now, what will be the position with regard to them? Two possible courses are open. The first is that provision be made for the immediate transfer of these petitions to the Federal Court. This alternative appears to be supported by Pandit Thakur Das Bhargava. The other is as the Bill provides, that they may be set down for the preliminary hearing before their Lordships. I submit that this provision in the Bill is an eminently reasonable one. The petitioners in these cases, most whom are tinder sentence of death which have been confirmed by the High Courts, have applied to the Privy Council for leave to appeal. Their petitions are already lodged there and the preliminary hearing will take-place in a few days. At the hearing their Lordships may refuse leave in some cases. In that event, there will be an end of the matter. The other possibility is that they may grant leave and then the appeals be admitted for final bearing. Provision has been made in the Bill that if leave is so granted the cases will be automatically transferred to India and the final disposal of those appeals will he in India before the Federal Court or the Supreme Court, as the case many be, I think, Sir, that is in eminently reasonable and practical provision and I submit that it ought to be accepted. It is not desirable to prolong the agony of these condemned persons much longer but to have the cases heard and finished as soon as possible.

Another suggestion made by an Honourable Member is that the Federal Court should be invested with jurisdiction to entertain petitions for leave with effect from the 20th September instead of the 10th October as laid down in the Bill. I may submit that this really does not make any material difference. According to the Privy Council rules, the Michaelmas term will begin on the 10th of October, and there is no chance of any petition being heard before, that date a the Privy Council is in vacation in these days. No list of cases which are set down for hearing during the Michaelmas term under the rules of the

[Dr. Bakhshi Tek Chand]

Privy Council can be issued after 23rd September except by special orders of their Lordships. Therefore this provision in the Bill is also eminently satisfactory and proper. I submit that the. Bill as introduced contains very salutary transitory provisions which will make arrangements for the hearing of a small number of cases during the interval with the least expenses to litigants, and for the transference of the bulk of them to the Supreme Court in India. I therefore support the motion.

Mr. President : Is it necessary to prolong the discussion on this motion?

Honourable Members : No, Sir.

Mr. President : The question is :

"That the Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions, introduced on September 14, 1949, be taken into consideration by the Assembly."

The motion was adopted.

Clause 2

Mr. President : Clause 2. The first amendment. (No. 8) is in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move

"That in sub-clause (1) of clause 2 for the words 'entertain, and save as hereinafter provided to dispose of, appeals', the words 'entertain and, save as hereinafter provided, to dispose of appeals'

or, alternatively,

entertain and (save as hereinafter provided) to dispose of appeals'

or, alternatively,

'entertain, and (save as hereinafter provided) to dispose of appeals' be substituted."

Sir, these are of a drafting nature, but they cannot be left to the Drafting Committee which has nothing to do with this Bill nor can they be referred to the Honourable Member-in-charge under our rules.

I next move :

"That in sub-clause (1) of Clause 2, for the word 'court' the word 'Court' (with a Capital 'c') be substituted."

I am not moving amendment No. 10, because Pandit Thakur Das Bhargava, who is more concerned with it, will move it.

Sir, I move now my next amendment No. 12—

"That in sub-clause, (2) of Clause 2,

(a) for the words "The appeals and petitions', the words 'An appeal or a petition', and

(b) for the words 'Indian appeals', the words 'Indian appeal', and for the words 'Indian petitions' the words 'Indian petition' be substituted."

These are all of a drafting nature.

Pandit Thakur Das Bhargava : Sir, my amendment No. 10 is really consequential to amendment No. 14.]If amendment No. 14 is not carried, amendment No. 10 will not arise. So, with your permission I will move amendment No. 10 after the House has disposed of Clause 3 to which my amendment No. 14 relates.

Mr. President : I do not know how that can be done.

Honourable Dr. B. R. Ambedkar : Sir, it is contained in clause 3 if my friend will read it. 'Federal court' is provided for in sub-clause (2) of clause 3. That is why the words "(other than the Federal Court)" are there in clause 2.

Pandit Thakur Das Bhargava : In this list it is in clause 2 and my amendment applies to it only.

Mr. President : You can leave it out for the present.

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment. It is quite unnecessary.

Shri B. Das (Orissa: General) : I beg to move:

"That in sub-clause (1) of Clause 2, the words 'or otherwise' be deleted."

Sir, it is very humiliating to me that, after you declare India a Republic on 26th January, 1950 certain powers of the King should be continued. Our legal authorities Dr. Ambedkar and Shri Alladi Krishnaswami Ayyar think that the Privy Council enjoys powers in criminal cases. Sir, we have disestablished the King. Where then is His Majesty's prerogative? I do not want any loophole should be left whereby the authority of the British nation should be perpetuated over us through the insertion of the words 'or otherwise'. This is a simple issue, if the Privy Council is not to decide any of our cases, why should we take shelter under the words 'or otherwise'? My friends the eminent lawyers like Mr. Munshi may say that I do not know law. But I know my political rights. I do not want that I should in any way be subjected to the sovereignty of India's former masters the British King or the King's Councillors.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think this amendment is very necessary, because the jurisdiction of the Privy Council may be derived also from the prerogative conferred by Statute. Therefore the words 'or otherwise' are quite necessary. We want to put an end completely to the jurisdiction not merely arising from the prerogative but from other sources also.

Mr. President : I will now put the amendments to vote.

The question is :

"That in sub-clause (1) of Clause 2, for the words 'entertain, and save as hereinafter provided to dispose of, appeals' the words 'entertain and, save as hereinafter provided, to dispose of appeals'

or, alternatively,

'entertain and (save as hereinafter provided) to dispose of appeals'

or, alternatively,

'entertain and (save as hereinafter provided) to dispose of appeal' be substituted.

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (1) of Clause (2), for the word 'court' the word 'Court' be, substituted."

The amendment was negatived.

Mr. President : The question is:

'That in sub-clause (1) of Clause (2), the words 'or otherwise' be deleted."

The amendment was negatived.

Mr. President : The question is

"That in sub-clause 2 of Clause 2, (a) for the words 'The appeals and petitions', the words 'An appeal or a petition', and

(b) for the words 'Indian appeals' the words 'Indian appeal', and for the words 'Indian petitions' the words 'Indian petition' be substituted."

The amendment was negatived.

Mr. President : Now I will put clause 2 to vote. The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3

Shri S. V. Krishnamoorthy Rao (Mysore State) : Mr. President, I am not moving any of my amendments.

Pandit Thakur Das Bhargava : Mr. President, I move :

"That for sub-clause (2) of clause 3, the following be substituted :—

'(2) Any legal proceedings pending by virtue of section 208 immediately before the appointed day before His Majesty in Council shall be transferred to the Federal Court and the Governor-General shall, in consultation with the Chief Justice of India, make proper and suitable arrangements for their disposal and all such proceedings pending before the Federal Court shall abate on the appointed day.' "

In regard to this clause I submit that it is easy to realise that if you have given any right to any people they should not be divested of them ordinarily speaking. Now, as regards the orders of the Federal Court there are many persons who are aggrieved. 'The present remedy is that they could get redress from the Privy Council. Some of these people must have made their petitions made their petitions and appeals against these proceedings. Clause 2 only seeks to abate those proceedings. Since we are passing an Act by virtue of which the powers of the Privy Council shall cease there is no reason why these persons should be divested of those rights. But I see one difficulty. If the judges have participated in the decisions against which relief is sought in the Privy Council it may be difficult to provide disposal of such proceedings or appeals by the same judges. But that difficulty can be obviated by having an order may constitute a such judge who did not participate in original orders may constitute a Division Bench, or something else may be improvised. It is not beyond the capacity of the Chief Justice of India or of the Governor-General to make some arrangement for the disposal of such cases.

Shri T. T. Krishnamachari (Madras : General) : My friend's remarks can be cut short if I explained there are really no appeals pending before the Privy Council from the Federal Court.

The Honourable Dr. B. R. Ambedkar : There is no pending appeal.

Pandit Thakur Das Bhargava : I heard from Dr. Ambedkar and Dr. Bakshi Tek Chand that there is no appeal pending, but there may be other proceedings. My submission is that if there are proceedings whereby remedy is possible to be given the persons concerned should not be deprived of their rights, merely because we are doing away with the jurisdiction of the Privy Council

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That after sub clause (2) of clause 3, the following proviso be added:—

'Provided that if special leave is granted on an Indian petition by the Judicial Committee of the Privy Council in a criminal matter, the appeal may be disposed of by the Judicial Committee before the commencement of the Constitution of India to be passed by the Constituent Assembly of India.' "

The only thing that I wish to submit in this connection is that, it an accused has gone up to the Privy Council and his appeal is admitted by special leave or by leave of the inferior court, then in that case it would be a hardship for an accused person to spend large sums once in London in engaging lawyers and again in India in engaging other lawyers. There would be further difficulty if the matter depends upon technical questions of law. One, court admitting the appeal on some technical grounds, and another court in deciding them. The change of lawyers as that of the courts would create practical difficulties. So long as our Constitution does not come into force, I would only submit that in a criminal matter, in order to avoid hardship to the accused persons, if there is an appeal before the Privy Council, the latter should be permitted to hear the appeal, provided the hearing is completed before the Constitution comes into force.

The Honourable Dr. B. R. Ambedkar : I do not think it is necessary to accept the amendment moved by my Friend, Pandit Thakur Das Bhargava. As my Friend, Mr. Krishnamachari, has stated; there are really no appeals pending before the Privy Council from the Federal Court, and consequently it is quite unnecessary to make any saving as proposed by my Friend, Pandit Thakur Das Bhargava, because nobody is really adversely affected, there being no pending cases.

With regard to the amendment moved by my Friend, Mr. Naziruddin Ahmad, I cannot understand why we should depart from the, principle which has been laid down that any criminal matter which is lodged before the Privy Council before the appointed day may be heard by them for purposes of admission but they would be returned to the Federal Court for final disposal. He wants to make a departure from it but I have not been able to see that the reasons he has advanced warrant it. Therefore I cannot accept his amendment.

Mr. President : The question is:

"That for sub-clause (2) of clause 3, the following be substituted:—

'(2) Any legal proceedings pending by virtue of section 208 immediately before the appointed day before His Majesty in Council shall be transferred to the Federal Court and the Governor-General shall in consultation with the Chief Justice of India, make proper and suitable arrangements for their disposal and all such proceedings pending before the Federal Court shall abate on the appointed day.' "

The amendment was negatived.

Mr. Naziruddin Ahmad : I would like to withdraw my amendment No. 17.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That clauses 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4

Mr. Naziruddin Ahmad : I do not want to move my amendment Nos. 18 and 19.

The Honourable Dr. B. R. Ambedkar: Sir, I move

"That for sub-clause (b) of clause 4, the following sub-clauses be substituted:—

'(b) any Indian appeal or petition on which the Judicial Committee has, after hearing the parties, reserved judgment or order; or

[The Honourable Dr. B. R. Ambedkar]

(c) any Indian appeal which has been entered before the appointed day in the list of business of the Judicial Committee for the Michaelmas sittings of the year 1949 and which after that day is not directed to be removed therefrom by or under the authority of the Judicial Committee; or';

and sub-clause (c) be re-lettered as sub-clause (d)."

What Probably requires some explanation is sub-clause (c). Although we have stated in the main clause that business or cases entered upon the calendar for the Michaelmas term may be left with the Privy Council for disposal, it is not quite certain how many of them may remain undisposed of. Therefore we propose to give permission to the Privy Council at the outset to say that, although a matter or a case is entered upon the cause list for the Michaelmas term, they will not be able to hear some of the matters, so that there may be no balance of pending cases left. In that event, those cases which the Privy Council directs that they will not be able to hear would also become automatically transferred to the Federal Court. It is to provide for that sort of contingency that I am adding this sub-clause (c) in terms of the amendment.

Pandit Thakur Das Bhargava : Sir, I move:

"That sub-clause (c) of clause 4 be deleted."

This sub-clause relates to Indian petitions lodged before the appointed day to the register of the Privy Council. Now, in regard to these petitions, I am very sorry that I have not been able to change my opinion even after hearing my Friend, Dr. Bakshi Tek Chand. I would like very much to fall in line with his line of argument but I am sorry there are several points which are troubling my mind, and so I have been forced to move this amendment. In my opinion, when a petition is lodged before the Privy Council, the occasion for engaging senior and costly counsels arises when the hearing for sanction takes place and not when the appeal is lodged. The appellants or applicants will be saved this cost if sub-clause (c) is deleted.

Secondly, I understand the whole reason for the transference of these powers is that we want that our own judges may decide our cases according to our standards of justice and our mental outlook and thought and therefore I think that every Indian who had filed an appeal will have the mental satisfaction of his case being decided by the courts in India. Then fact that appeals have been filed need not be a reason for continuing these appeals in a country other than India. The mere fact that an appeal has been lodged cannot constitute a good reason for continuing the appeals in that court. Moreover, it is an accepted proposition that the same judges who heard the case at the time of granting leave should decide the case ultimately. Now we have just got an example of this principle when Dr. Ambedkar moved his amendment No. 20 substituting sub-clauses (b) and (c) and it is but meet that the case must remain in the same hands. If at the time when the special leave is given any remark in respect of any legal principle involved or any fact in the case is made by the judge who admitted the case, it would be difficult for any judge subsequently to get over the effect of those remarks and the accused will either be deprived of the advantages of these remarks or will be unduly prejudiced by them if another judge was called upon to decide the case later. Therefore on all these grounds, nothing will be lost if all these cases which are in a preliminary stage where only an appeal has been lodged are transferred back to the courts here. I am clearly of opinion that clause (c) of clause 4 should be deleted.

(Amendment No. 22 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I do not accept the amendment of Pandit Thakur Das Bhargava.

Mr. President : The question is:

"That for sub-clause (b) of Clause 4, the following sub-clauses be substituted—

'(b) any Indian appeal or petition on which the Judicial Committee has, after hearing the parties, reserved judgment or order; or

(c) any Indian appeal which has been entered before the appointed day in the list of business of the Judicial Committee for the Michaelmas sittings of the year 1949 and which after that day is not directed to be removed therefrom by or under the authority of the Judicial Committee; or';

and sub-clause (c) be re-lettered as sub-clause (d)."

The amendment was adopted.

Mr. President : The question is:

"That sub-clause (c) of Clause 4 be deleted."

The amendment was negatived.

Mr. President : The question is:

"That clause 4, as amended, stand part of the Bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 5

Mr. Naziruddin Ahmad : Sir, I wish to move amendments Nos. 23 and 29. They are both of a drafting nature. I beg to move :

"That in sub-clause (1) of Clause 5, for the word "jurisdiction" the words "power and jurisdiction" be substituted."

This expression has been used in some of the newly drafted articles to the Draft Constitution. This would make the sentence full and complete.

I beg to move :

"That in sub-clause (3) of Clause 5, for the words 'certificate of the Registrar' the words 'certificate in this behalf by the Registrar' be substituted."

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in sub-clause (3) of Clause 5, for the bracket, letters and word '(b) (c)' the brackets, letters and word '(b), (c) or (d)' be substituted."

It is purely consequential.

Mr. President : The question is:

"That in sub-clause (3) of Clause 5, for the brackets, letters and word '(b) (c)' the jurisdiction' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (3) of Clause 5 for the brackets, letters and word '(b) (c)' the brackets, letters and word '(b), (c) or (d)' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (3) of Clause 5, for the words 'certificate of the Registrar' the words 'certificate in this behalf by the Registrar' be substituted."

The motion was negatived.

Mr. President : The question is:

"That clause 5, as amended, stand part of the Bill."

The motion was adopted.

Clause 5, as amended, was added to the Bill.

Clause 6

Pandit Thakur Das Bhargava : Sir, I beg to move:

"That in clause 6, after word 'appeals' the words 'or petitions' be inserted."

Shri T. T. Krishnamachari : That follows the scheme which Pandit Thakur Das Bhargava has in regard to the deletion of sub-clause (c) of clause 4. Since that has not been accepted by the House, I am afraid there is no point in putting this amendment to vote.

Mr. President : I will put it to vote anyway.

The question is :

"That in clause 6, after word 'appeals' the words 'or petitions' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That Clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

Clause 7

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in Clause 7, the comma after the word 'effect' be deleted."

This comma seems to be offensive to the eye. The context is "shall have effect accordingly". There is no need for a comma after the word "effect".

Mr. President : I do not think this need be put to vote, this question of 'comma'.

The Honourable Dr. B. R. Ambedkar : This will be looked into. This need not be put to vote.

Mr. President : The question is:

"That Clause, 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

Clause 8

Mr. Naziruddin Ahmad : Sir, I beg to move:

"'That in Clause 8, for the word 'petition' the words 'Indian petition' be substituted."

With regard to this we have defined "Indian petitions" in sub-clause (2) of Clause 2. There we have said "the appeals and petitions" aforesaid are hereinafter referred to as "Indian appeals" and "Indian petitions", respectively. Here the words are used together, 'Indian appeals and petitions'. According to this clause strictly, they should be "Indian appeals" and "Indian Petitions".

Then I move:

"That in Clause 8, the comma after the word 'effect' occurring in line 3, and the comma after the word 'Council' occurring in line 4 be deleted."

These words are unnecessary and impede the reading.

Shri B. Das: Sir, I beg to move:

" That Clause 8, be renumbered as sub-clause (1) of that clause, and the following new sub-clause be added :—

(2) Any such order or decree made after the appointed day must be simultaneously made by the Supreme Court in India after the date of promulgation of the Constitution Act."

Sir, my.....

Shri T. T. Krishnamachari : My honourable Friend is labouring under a misapprehension. He thinks that the appointed day is 26th of January; the appointed day is the 10th of October.

Shri B. Das: Quite so; you please listen to me and you will under stand what my objection is.

Sir, it has been very irksome to me that the date of declaration as Republic of India has been postponed and we are labouring under the control of the British Raj, the United Kingdom Government in one shape or another. One hopes that after the 26th of January, 1950, there will be no domination by the United Kingdom Government or His Majesty in Council or anybody in matters relating to India, unless, somehow through the back-door of Commonwealth, matters come in as unfortunately we have provided for in an article yesterday."

I agree with my honourable Friend, Mr. T. T. Krishnamachari that the appointed day is earlier. But, can we guarantee that all orders will be passed by the Privy Council near about the appointed day and no others will be held up till the 26th January ? If some orders are held up, because the Privy Council reports to His Majesty in Council and His Majesty in Council may sit over it and pass their order on the 27th of January and such orders may come on the 27th of January, how will that order be announced in India ? Then, there are petitions and orders on these petitions may be passed on the 26th of January 1950. Suppose it takes time to be communicated to India after the 26th of January. When we are a Republic, we do not recognise any jurisdiction of the Privy Council or the so-called His Majesty in Council. Therefore, the proper thing is, if any such order is held up, the Privy Council or His Majesty in Council should forward it to our highest judicial court, the Supreme Court, and if they announce it publicly in England on the 27th of January, simultaneously, the Chief Justice of the Supreme Court should announce it in India.

We do not want any further subordination in any shape or manner to the Privy Council. It went on fattening the British lawyers at the cost of India. One is glad, and I am very glad that British lawyers are going to be lean in the future because the huge amounts of money that flowed from India to the U.K. will not flow in future. But, at the same time, I am more proud of my sovereignty; I am more proud of my independence. Let Dr. Ambedkar and Mr. Munshi say—I would not accept Mr. T. T. Krishnamachari's word on it—that no such orders will be withheld after the 26th of January. They may be withheld. Therefore, I have moved my modest amendment which is purely political and constitutional. I am not raking up any legal point : I have no right to say anything on legal matters. But I do say it will be an insult to me if an order is not simultaneously issued by the Supreme Court for any order that His Majesty in Council or the Privy Council may issue after the 26th of January 1950, the date of India's becoming a Republic. That is my very modest amendment. I hope my honourable Friend, Dr. Ambedkar, will see the justice of it and to save our honour, and not to burden us with further indignities and humiliations through association with the British, my amendment should be accepted.

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment.

Mr. President: Amendment No. 33 need not be put.

The question is :

" That clause 8 be renumbered as sub-clause (1) of that clause, and the following new sub-clause be added:—

"(2) Any such order or decree made after the appointed day must be simultaneously made by the Supreme Court in India after the date of promulgation of the Constitution Act."

The amendment was negatived.

Mr. President : The question is:

"That Clause 8, stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clause 9

The Honourable Dr. B. R. Ambedkar : Sir, with your permission I would like to move the amendment which have been put in a somewhat different form because I thought that the amendments as tabled rather create a confusion. If you will allow me, I have put all these in a consolidated form. There is no substantial change at all. It is just a matter of form and I thought that the House would be in a better position to get at the idea of what we are doing in clause 9.

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

For clause 9, the following clause be substituted :—

"9. (1) In section 205 of the Government of India Act, 1935 (hereinafter referred to as the said Act), for sub-section (2) the following sub-section shall be substituted, namely:—

Amendments of the Government of India Act, 1935.

"(2) Where such certificate is given, any party in a case may appeal to the Federal Court on the ground that any question as aforesaid has been wrongly decided and, with the leave of the Federal Court, on any other ground."

(2) In Section 209 of the said Act, for sub-sections (1) and (2) the following subsections shall be substituted, namely :—

"(1) The Federal Court in the exercise of its appellate jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, including an order for the payment of costs, and any decree so passed or order so made shall be enforceable throughout the territory of India"."

Act V 1908.

I should like to add one or two words to be interpolated, which have been omitted :

"In the manner provided in that behalf in the Code of Civil Procedure, 1908, or in such other manner as may be prescribed by or under a law of the Dominion Legislature, or subject to the provisions of any such law in the manner prescribed by rules made by the Federal Court."

"(3) In clause (a) of sub-section (3) of section 210 of the said Act, for the word, brackets and figure "sub-section (2)", the word, brackets and figure "sub-section (1)" shall be substituted."

"(4) In section 214 of the said Act, after sub-section (1) the following sub-section shall be inserted, namely:—"

I should like to add a few words at the beginning.

" (1A) Subject to the provisions of the Code of Civil Procedure, 1908, or any law made by the Dominion Legislature, the Federal Court may also from time to time, with the approval of the Governor-General, make rules of court for regulating the manner in which any decree passed or order made by it in the exercise of its appellate jurisdiction may be enforced."

Act V of 1908.

The object of clause 9 is to make the Federal Court a complete and independent Court. There were certain limitations under the existing Government of India Act, 1935 which prevented the Federal Court from drawing up its own decrees. It had to send the matter to the Trial Court. All these limitations it is necessary to withdraw because the Federal Court is going to take the place of the Privy Council.

Mr. Naziruddin Ahmad : I beg to move:

"That in sub-clause (1) of Clause 9 in the proposed sub section (1) of section 209 of the Government of India Act, 1935, for the words 'is necessary' the words 'as it may consider necessary', be substituted."

The context where this occurs says 'make such order as is necessary'. I wish to make it 'as it may consider necessary'. This is the proper form. With regard to the large amendment moved by Dr. Ambedkar my difficulty is that there have been slight changes in the new draft which has been circulated and then again in moving sub-clause (4) of clause 9 some further changes have been made. I am not in a position to see the exact effect of this new change orally introduced. I think he has introduced the words—Subject to the provisions contained in the Civil Procedure Code 1908 or to any law or provision of law hereafter made by the Dominion Legislature. I think with regard to the latter condition, this is absolutely unnecessary. This clause 9 attempts to amend Section 205 of the Government of India Act. This Government of India Act will expire—we hope—on the 26th January or thereabout with the passing of India's Free Constitution. Therefore this amendment introduced by clause 9 of the present Bill will have a very short life. It will give a new lease of life to the amended Section 205 of the Government of India Act which is again also to expire on the 26th January. During this short period I do not know whether it is intended to introduce law affecting Section 205. If this is to be done, it is to be done now in this House in the "Constitution" Section and not in the other aspect of this House *viz*., the "Legislative" Section. I feel that unless it is intended to introduce any fresh legislation to affect the situation within this short interval, I do not think there is any necessity for these conditions. I do not know what these words really imply. Do they imply anything practical or merely a kind of a safeguard against a thing which does not really exist ? I want only clarification. I do not move my other amendments Nos. 40 and 41.

Pandit Thakur Das Bhargava : Sir, I beg to move :

"That in sub-clause (1) of Clause 9, after the proposed new sub-section (1) of section 209 of the Government of India Act 1935, the following new sub-section be inserted :—

'(1A) The Federal Court in the exercise of its criminal jurisdiction conferred on it by section 5 of this Act shall notwithstanding anything to the contrary in any law, be entitled to Pass any order of release or set aside any sentence or pass any other appropriate order which it considers just under the circumstances if it regards the provisions of the relevant law depriving life or personal liberty to be not consistent with reason and justice or the procedure observed as unfair or the detention as unreasonable or unjust.' "

With your permission as an alternative I beg to move the following :

No. 43.

The Honourable Dr. B. R. Ambedkar : That amendment, I submit, is outside the scope of the Bill. The Bill deals merely with the transfer of jurisdiction.

Pandit Thakur Das Bhargava : It is not a question of transfer of jurisdiction. I only give what is contained in clause 5 and am defining what jurisdiction shall be conferred, not leaving it to investigation as to what the prerogative of His Majesty was, I am only making these powers in a concrete form from what it is in the abstract .....

The Honourable Dr. B. R. Ambedkar : This Bill does not propose to give any direction to the Federal Court as to the manner in which they should exercise the jurisdiction with which they become vested under the present Bill.

Pandit Thakur Das Bhargava : When a Bill specifically speaks of conferring jurisdiction, it is the business of the law to expound and define what the jurisdiction is. I only condense the contents of that jurisdiction and make, it absolutely clear what that jurisdiction means.

Shri K. M. Munshi (Bombay: General) : May I rise to a point of order? This is really speaking—bringing in the due process of law by the back-door, which was disposed of more than once and debated over and over again in this House. The proposal was disposed of some months ago and disposed of day before yesterday. The idea is to vest the Supreme Court with that power. This is, therefore, entirely out of Order, apart from the stand taken by Dr. Ambedkar.

Pandit Thakur Das Bhargava: My submission is that it is certainly not out of order on merits. The amendment says the Federal Court shall exercise all its criminal jurisdiction conferred by Section 5. Section 5 says.

"As from the appointed day, the Federal Court shall, in addition to the jurisdiction conferred on it by the Government of India Act, 1935, and the Federal Court (Enlargement of jurisdiction) Act, 1947, but subject to the provisions of this section have the same jurisdiction to entertain and dispose of Indian appeals and petitions as His Majesty in Council has. whether by virtue of His Majesty's prerogative or otherwise, immediately before the appointed day."

Up to now this prerogative of the Crown or His Majesty included tins power of due process. At present this being enjoyed by the Privy Council. Clause 9(1) defines civil side powers. Clause 9(1) of the Bill reads as follows :

"It shall in the exercise of its appellate jurisdiction pass such decree or make such order as is necessary for doing complete justice."

So, in regard to civil law the powers are given in 9(1). So this is perfectly in order.

Mr. President : This Bill is intended to transfer whatever power and jurisdiction the Privy Council has to the Federal Court. If the Privy Council has got the power you suggest in this amendment, that will be transferred to the Federal Court. If it is, not, the question is whether in this Bill you can enhance or extend the power of the Federal Court.

Pandit Thakur Das Bhargava : It is beyond my intention to enhance that power in clause 9(1). Power has been described as the power necessary for doing complete justice on the civil side. Similarly I want to declare what that power is in the exercise of the prerogative on the criminal side. Such powers are contained in the unwritten convention of England and we do not know specifically the full content of these powers but those conventions shall have to be imported and interpreted to defame the powers of the Federal Court. This is the time to interpret those powers and I am only making what is implicit in this clause explicit.

Mr. President : Is that implicit what you want to make explicit? If it is there, then it is quite unnecessary. If it is not there, you cannot add to it.

Pandit Thakur Das Bhargava : Dr. Ambedkar has moved a motion which shows what orders are necessary on the civil side in order to do justice. My suggestion is that the same thing may be done on the criminal side also. The civil side is being provided for. Why not the criminal side also ?

Shri Alladi Krishnaswami Ayyar (Madras: General): We have mentioned what powers are necessary for doing complete justice. What my honourable Friend wants is to add to the existing powers, and that is not permissible.

Pandit Thakur Das Bhargava : While they have made provision on the civil side, they are silent on the criminal side. If the House does not agree, to my definition of these powers I am agreeable to cutting off the last three lines and say that in the exercise of its power, the Federal Court will be able to set aside any sentence or release any person.

Mr. President : This is a matter which we can consider when we are considering the powers of the Federal Court and then you might move an amendment giving the power you mention, to the Federal Court. But here we are, concerned only with the transfer of whatever power is vested in the Privy Council, to the Federal Court. Therefore the question you have raised does not arise here and I think it is out of order.

Pandit Thakur Das Bhargava : So far as amendment 43 is concerned it deals with the special jurisdiction on the criminal side and you are not inclined to give permission to move it. But so far as 39 is concerned, which I have already moved, I do not think any objection can be valid. I am only declaring what on the criminal side, the powers ought to be according to the right interpretation of clause 5.

Mr. President : As regards 39, let me see.

Pandit Thakur Das Bhargava : Objection is taken only to 43, but not to 30.

Mr. President : How does it stand on a different footing? It also say "The Federal Court. . . . . shall. . . . . be entitled to pass any order. . . . . which it considers just under the circumstances. . . . . ."

Pandit Thakur Das Bhargava : It only shows what are the powers for doing complete justice on the criminal side.

Mr. President : I do not think this is the proper place where you can put this in. If you want to confer any power on the Federal Court, you can do it independently or when we are dealing with the powers of the Federal Court but not while we are transferring whatever powers are possessed by the Privy Council, to the Federal Court.

Pandit Thakur Das Bhargava : All that I can submit, Sir, is that if it is permissible to mention the civil side under 209 (1), it is equally permissible to mention what are the powers, on the criminal side also.

Mr. President : What are you referring to ?

Pandit Thakur Das Bhargava : I am referring to clause 9 sub-clause (1) of the Bill.

Mr. President : It is nowhere stated, "Notwithstanding any law to the contrary etc."

Pandit Thakur Das Bhargava : I want only the substance of the article to be put in and not the exact words.

Mr. President : You cannot bring it in this round-about way. If it is to be brought in it must be done in the proper way.

Pandit Thakur Das Bhargava : I may seek permission to eliminate the words "notwithstanding anything to the contrary in any law".

Mr. President : The question is whether it is something in addition to the existing powers of the Federal court or not. If it is. an addition to the existing powers of the Federal Court, then we cannot take it up. I have given my ruling.

Shri Shankarrao Deo (Bombay: General) : Sir, you have already given your ruling and I do not know why the Member is persisting.

Pandit Thakur Das Bhargava : Sir, I have not caught what Mr. Shankarrao Deo is saying.

Mr. President : I cannot allow it. It is ruled out.

Well, these are all the amendments. Does any one wish to say anything? Well, I will put the amendments. First I put the amendment moved by Dr. Ambedkar. I suppose I need not read it. It is No. 37.

The question is :

That for clause 9, the following clause be substituted.

9. (1) In section 205 of the Government of India Act, 1935 (hereinafter referred to as 26 Ged. e.c. 21 the said Act), for sub-section (2) the following sub-section shall be substituted. namely :—

Amendments of the Government of India Act, 1935.

"(2) Where such certificate is given, any party in a case may appeal to the Federal Court on the ground that any question as aforesaid has seen wrongly decided and, with the leave of the Federal Court on any other ground."

(2) In section 209 of the said Act, for sub-section (1) and (2) the following sub-section shall be substituted, namely :—

'(1) The Federal Court in the exercise of its appellate jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, including an order for the payment of costs, and any decree so passed or order so made shall be enforceable throughout the territory of India in the manner provided in that behalf in the Code of Civil Procedure, 1908, or in such other manner as may be prescribed by or under a law of the Dominion Legislature, or subject to the provisions of any such law, in the manner prescribed by rules made by the Federal Court.'

Act V of 1908.

(3) In clause (a) of sub-section (3) of section 210 of the said Act, for the word, brackets and figure "sub-section (2)", the word, brackets and figure "sub-section (1)" shall be substituted.

(4) In section 214 of the said Act, after sub-section (1) the following sub-section shall be inserted, namely :—

" (1A) Subject to the provisions of the Code of Civil Procedure, 1908, or in any law made by the Diminion Legislature, the Federal Court may also from time to time, with the approval of the Governor-General, make rules of court for regulating the manner in which any decree passed or order made by it in the exercise of its appellate jurisdiction may be enforced."

Act V of 1908.

The amendment was adopted.

Mr. President : Then I put No. 38, Mr. Naziruddin Ahmad's amendment.

The question is :

That in sub-clause (1) of Clause 9, in the proposed sub-section (1) of section 209 of the Government of India Act, 1935, for the words "is necessary" the words "as it may consider necessary" be substituted.

The amendment was negatived.

Mr. President : Then I put the clause as amended by Dr. Ambedkar's amendment: The question is :

"That clause 9, as amended, stand part of the Bill."

The motion was adopted.

Clause 9, as amended, was added to the Bill.

Clause 10.

Mr. President : Then we take up clause 10. Mr. Naziruddin Ahmad has an amendment. Do you want to move it ?

Mr. Naziruddin Ahmad : No, Sir, but I would like to speak a few words.

I wish to oppose clause 10 on the ground, first, that it is unnecessary, and secondly, that it creates some amount of confusion. My reasons are that the Federal Court was constituted by the Government of India Act, 1935. In 1937, by the Adaptation Order in accordance with that Act, the Civil Procedure Code was amended. One amendment was the introduction of Section 111-A of the Civil procedure Code relating to the appeals to the Federal Court, and the other amendment was the addition of a new Rule 17 of Order XLV, which dealt generally with appeals to the Privy Council. The changes introduced by the Adaptation Order separated Federal Court appeals from those to the Privy Council. Before these adaptations, there were appeals to the Privy Council as well as to the Federal Court. But the procedure laid down in Sections 109, 110 and 111 of the Civil Procedure Code and in Order XLV of that Code was cumbrous. They were necessitated because some preliminary steps were necessary to be taken in India before an appeal to the Privy Council be taken. The Privy Council was situated at a distance of six thousand miles and therefore preliminary steps had to be taken in India. But after the creation of the Federal Court, as the Federal Court is situated within India, all the paraphernalia necessary in connection with Privy Council appeals ceased to be necessary. It was on account of this situation, and on account of the inconvenience caused to the parties who have one, to go to the High Court and again to the Federal Court that Act XXI of 1941 was passed. That Act introduced radical changes in the existing law so far as appeal from the High Courts to the Federal Court was concerned by enabling that Court to regulate its procedure by its own rules.

With regard to that Act XXI of 1941 there are only three sections to which I need refer. Section 2 repealed section 111A which had been introduced by the Adaptation Order. Section 2 also repealed rule 17 of Order XLV which, as I have pointed out, had also been introduced in Order XLV of the Civil Procedure Code by the Adaptation Order of 1937. Section 3 of Act XXI of 1941 gave power to the Federal Court to make Rules. On account of this the Federal Court made Rules in 1942 which have been amended and brought up to date from time to time. In these Rules all matters relating to appeals to the Federal Court have been exhaustively dealt with, both in civil and criminal cases. Therefore, the sections of the Civil Procedure Code which I have referred to, namely, sections 109, 110 and 111, and Order XLV which dealt with appeals to the Privy Council are inapplicable to the Federal Court.

What remain of these sections and of Order XLV merely relate to appeals to the Privy Council, and on account of the abolition of the jurisdiction of the Privy Council they would be dead letters and require to be repealed. But so far as the present purpose is concerned I submit that they are no longer applicable to present day circumstances. In the statement of Objects and Reasons of the Bill relating to Act XXI of 1941 it was stated :

> "The Government of India (Adaptation of Laws) Order, 1937 added Section 111A and Order 45 rule 17 to the Civil Procedure Code and thereby made the Procedure of Privy Council Appeals applicable to Federal Court Appeals. The aforesaid procedure is cumbersome and dilatory, means for appeals to a Court six thousand miles away and should not be applicable to a court of appeal situated in India. Moreover, the addition of these provisions to the Civil Procedure Code have derogated from the powers of the Federal Court to regulate its own practice and procedure under section 214 of the Government of India Act and has been commented on unfavourably by the Federal Court in its decision in case No. 15 of 1939, Lachmeshwar Prasad Shukul Vs. Basdeo Lal Choudhury. It is desirable therefore both from the points of view of simplifying procedure in Federal Court Appeals and restoring to the Federal Court its powers to regulate practice and procedure that the new additions to the Civil Procedure Code should cease to be operative.'

[Mr. Naziruddin Ahmad]

I submit that these additions which have been made in the Civil Procedure Code would have been applicable to a Court situated far away. So this cumbersome procedure was abrogated by the Amendment Act of 1941. No reference at all would therefore be necessary to the Code of Civil Procedure, because the rules of Civil Procedure relating to appeals are as prescribed by the Federal Court in the Federal Court Rules of 1942 by virtue of Act XXI of 1941. In these circumstances I submit that the only rules that should prevail are the Rules made by the Federal Court. As I have said, they cover civil and criminal cases. A mere reference to those Rules would satisfy the Honourable Member as to the accuracy of the statements made by me.

I submit that clause 10 which says that the Civil Procedure Code shall have effect with regard to practice relating to appeals would be improper. We have already in the previous clause—clause 9—added sub-section (1A) to section 214 of the Government of India Act which deals with procedure relating to appeals to the Federal Court. I submit therefore that there would be a confusion between the Rules framed by the Federal Court, which are all complete by themselves, and the Civil Procedure Code which is purported also to be made applicable. If we are left between these two, I should think that the Rules prescribed by the Federal Court, which are complete in themselves, should alone occupy the field and the reference to the Civil Procedure Code in clause 10 should be abrogated. I hope the Honourable Member will consider this suggestion and agree to the deletion of clause 10.

Shri Alladi Krishnaswami Ayyar : Mr. President, my Friend Mr. Naziruddin Ahmad is labouring under a misapprehension. So far as the Rules under the law, as understood prior to this Bill now before us, are concerned there was no direct enforcement of the decisions of the Federal Court. The Federal Court has to send its judgment to the lower court for the necessary. Order being drawn up and there was no direct right of enforceability in regard to the judgments of the Federal Court. That is why that lacuna has been filled up by an earlier clause which has been passed, that is, it shall be enforceable and it is not merely sending the judgment to the lower court. There was an anomaly there, namely, of the High Court trying to give effect to the judgment of the Federal Court, but the Federal Court being powerless to ensure the enforceability of its own judgment or decree. That anomaly has now been removed because it has now been made enforceable. I am fairly certain that the Rules of the Federal Court did not and could not provide for that enforceability when the statute itself did not provide for the direct enforceability of the judgments of the Federal Court. Therefore, we have necessarily to provide for the proper machinery for the enforceability of the judgments of the Federal Court.

In the previous clause which has just been passed we have made a provision to the effect that the decree or order of the Federal Court shall be enforceable throughout the Dominion of India. Having made that provision, how is it to be enforced ? It has to be by a fresh Act passed by the Dominion Parliament. But until the Dominion Parliament passes some law, there must be some law in the field for the enforcement of the decrees passed by the Federal Court and there has to be adequate provision for their, enforceability. The object of this clause 10 is to apply, for example, Order XLV rule 15 so far as it may. For instance, the order of His Majesty in Council was directly enforceable under the provisions of Order XLV rule 15. It is merely to be sent to the High Courts in India and the High Courts in India will send them to the courts which originally passed the decree and they will enforce the decree. It is merely a question of adaptation. The provisions of the Civil Procedure Code in so far as they will be applicable to the new circumstances will be applicable. At best all that can be said is "So far as it may be applicable". Therefore it is an extension of provisions like rule 15 for the judgments of the Federal Court

Later on it will be open to the Dominion Parliament to pass any law at variance with or in addition to the procedure provided in rule 15. But at present we have not got the necessary time and no law has been passed.

Therefore, when once all the jurisdiction of His Majesty in Council is transferred to the Federal Court and when you have made a provision that all the judgments and decrees of the Federal Court shall be enforceable throughout the Dominion of India, there must be a proper machinery for the enforceability of those decrees. No doubt you have made a substantial provision to the effect that the judgment and the decrees of the Federal Court shall be enforceable throughout the Dominion of India. That is why reference has been made to the Code of Civil Procedure and to the Dominion Parliament. No doubt the rules must necessarily refer to any existing law. To prevent a further lacuna, provision is made for the rules.

Therefore, there are three things. One is the extent to which the provision of the Civil Procedure Code can be adapted and extended to the judgment of the Federal Court; in the new dispensation the provisions of the Civil Procedure Code will apply. Secondly, there is the dominant power of the Legislature to intervene and to make appropriate changes. Subject to these, any rules of the Federal Court can be made if there is any lacuna in any of these provisions. Therefore the object is to complete the thing, namely that there will be a triple machinery for the enforcement of a decree. That is the object of the provisions.

Mr. President : Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar : No, Sir.

Mr. President : The question is : —

"That clause 10 stand part of the Bill."

The motion was adopted.

Clause 10 was added to the Bill.

Mr. President : Then there is another amendment, a new clause to be added

Mr. Naziruddin Ahmad : I beg to move:

"That after, clause 10 the following new clause be added:—

'11. The Interpretation Act, 1899, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament.' "

Sir, we are by this Bill amending the Government of India Act to which the British Interpretation Act of 1899 applies. We have also passed two Acts in this House to amend the Government of India Act and we have made the Interpretation Act of 1899 to apply to the interpretation of those Acts. As this Bill is going to be incorporated largely into the body of the Government of India Act, it seems proper that the interpretation of it, if there is any, would depend upon the Interpretation Act of 1899. It would be highly anomalous if the main part of the Act would be interpreted in accordance with the Interpretation Act of 1899 and the other parts of that big Act which are to be filled up by this Bill, would be governed by the General Clauses Act. If we do not limit in any way the interpretation of this Act, the General Clauses Act will normally apply. It was under these circumstances that this rule of interpretation was made applicable in all other cases in a similar situation. Though it is very unlikely that any question of interpretation of this nature may arise, still it may be that some fine question may arise which may depend entirely on the Interpretation Act and as to which Interpretation Act will apply. So I think there should be one Interpretation Act which would be

[Mr. Naziruddin Ahmad]

applicable, namely the Act of 1899 and not the General Clauses Act of India. This, it seems to me, is a corollary to what we have already agreed in the past and in the circumstances of the case.

The Honourable Dr. B. R. Ambedkar : Sir, I do not accept that amendment, it is quite unnecessary.

Shri Alladi Krishnaswami Ayyar : Sir, I should just like to say a word or two with regard to this point. So far as the Interpretation Act is concerned, it can apply only to Acts of the British Parliament. This is not an Act of the British Parliament, it is an Act of our Parliament and therefore you cannot extend the provision of the Interpretation Act for the interpretation of a Dominion Act like this one. If any question incidentally arises as to the interpretation of a British Act for the purpose of construing this Act, you can always rely upon the interpretation Act. Supposing, for example, you have to refer to the Judicial Committee Act, the Judicial Committee Act will have necessarily to be construed in the light of the Interpretation Act because that will always be available. This particular Act is an Act of the Dominion Legislature and therefore the General Clauses Act is made applicable. Between the two there is no kind of lacuna. When any question comes up before the Federal Court, it will either be an Act of the British Parliament in which case the Interpretation Act will continue to be applicable, or it is an Act of the Dominion Legislature in which case the General Clauses Act is applicable. Therefore, under these circumstances, I submit there is absolutely no reason for this amendment.

Mr. President : The question is:

"That after clause 10, the following new clause be added:—

'11. The Interpretation Act, 1899, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament.' "

The amendment was negatived.

Clause 1.

Mr. President : Then we go to clause I.

Mr. Naziruddin Ahmad : Sir, I move:

"That in sub-clause (1) of Clause 1, for the words 'Abolition of Privy Council Jurisdiction Act' the words and brackets 'Privy Council (Abolition of Jurisdiction) Act' be substituted."

Sir, in all cases where we have passed amending Acts, we have always named the Act by the most important condition first of all and then with the detailed description of it within brackets. I have a list of Acts of the year 1947. We have Act XII entitled "Railways (Transport of Goods) Acts," we have Act XV, "Armed Forces (Emergency Duties) Act", we have Act 'XXIV, "Rubber (Protection and Marketing) Act". and there are many Acts with titles like this. I therefore submit that this nomenclature should be accepted.

Sir, I also move my other amendment :

"That after sub-clause (2) of Clause 1, the following new sub-clause be added :—

'(3) It shall also apply 'to Indian appeals and Indian petitions arising out of cases originating in Courts in the acceded States.' "

I do not know whether the acceding States are already governed by the Federal Court. I have no clear idea. I want by this amendment to seek clarification. If this is accepted then amendment No. 4 will have to be accepted as necessary corollary.

Mr. President : Do you wish to say anything about this?

The Honourable Dr. B. R. Ambedkar : The emphasis is on the abolition of the jurisdiction of the Privy Council, and obviously that emphasis could not be realised if the words "abolition of jurisdiction" were put in brackets.

Mr. President : Do you wish to say anything about the 7th amendment?

The Honourable Dr. B. R. Ambedkar : Sir, the acceding States were never subject to the jurisdiction of the Privy Council. But as a measure of extreme caution, it will be seen that in sub-clause (2) the words used are "within the territory of India". Therefore, it is unnecessary to make any mention of the acceding States.

Mr. President : I shall now put the amendments to vote.

The question is :

"That in sub-clause (1) of Clause 1, for the words 'Abolition of Privy Council Jurisdiction Act' the words and brackets 'Privy Council (Abolition of Jurisdiction) Act' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That after sub-clause (2) of clause 1, the following new sub-clause be added :-

'(3) It shall also apply to Indian appeals and Indian petitions arising out of cases originating in Courts in the acceded States.' "

The amendment was negatived.

Mr. President : The question is :

"That Clause 1 stand part of the Bill."

The motion was adopted.

Clause I was added to the Bill.

TITLE AND PREAMBLE

Mr. Naziruddin Ahmad : I do not wish to move my amendment to the Preamable.

Mr. President : The question is:

"That the Preamble stand part of the Bill."

The motion was adopted.

The Preamble was added to the Bill.

Mr. Naziruddin Ahmad : I do not wish to move my amendments to the Title.

Pandit Thakur Das Bhargava : I do not wish to move my amendments to the Title.

Mr. President : The question is:

"That the Title stand part of the Bill."

The motion was adopted.

The Title was added to the Bill.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That the Bill, as amended, be passed."

Mr. Naziruddin Ahmad : The motion should have been:

"That the Bill as settled in the House, be passed."

Mr. President : That is the motion in the Order Paper—

"That the Bill, as settled by the Assembly, be passed."

Shri K. M. Munshi : Mr. President, Sir, I would like only to say a few words on this occasion when we are passing a Bill which will end our connection with the Privy Council which has been our highest court for about one hundred and fifty years. I share the gratification of this House as well as perhaps the gratification of this country that our Supreme Court in the future, and to a qualified extent the Federal Court in the present, will be completely independent of the Privy Council. I may take this opportunity of making a few observations on this point when we are parting company with the Privy Council.

Sir, though we are quite happy that we are becoming completely independent in the matter of the Judiciary, parting with the Privy Council—I am sure it is not my feeling alone, but the feeling of all members of the Bar in India—is not a matter which can be gone through without a pang. Most of us have looked to the Privy Council for the last century or so with great respect. If I may say so personally for several years in the beginning of my professional life, I have read in those beautiful thin volumes of the Indian Appeals, the masterly judgment which go to make up practically the fountain-source of our law in India.

Sir, the British Parliament and the Privy Council are the two great institutions which the Anglo-Saxon race has given to mankind. The Privy Council during the last few centuries has not only laid down law, but coordinated the concept of rights and obligations throughout all the Dominions and Colonies in the British Commonwealth. So far as India is concerned, the role of the Privy Council has been one of the most important. It has been a very great unifying force and for us Indians it became the instrument and embodiment of the rule of law, a concept on which alone we have based the democratic institutions which we have set up in our Constitution.

Sir, on the 26th of January our Supreme Court will come into existence and it will join the family of Supreme Courts of the democratic world of which the Privy Council is the oldest and perhaps the greatest. I can only hope and trust that though we part with the Privy Council our Supreme Court will carry forward the traditions of the Privy Council, traditions which involve that judicial detachment, that unflinching integrity, that subordination of everything to the rule of law and that conscientious regard for the rights and for justice not only between subjects and subjects but also between the State and the subjects. And no higher tribute can be paid to the Privy Council than my hope that our Supreme Court may be given the strength to maintain the traditions of fearless justice which have prevailed in this country as a result of the supremacy of the Privy Council.

With these words, Sir, I support the motion that has been moved by my honourable Friend, Dr. Ambedkar.

Shri Alladi Krishnaswami Ayyar : Mr. President, it is the object of this measure to abolish the jurisdiction of His Majesty in Council from the appointed day, and place the Federal Court in exactly the same position as the Privy Council. The Bill when passed into law will facilitate the transition to the New Constitution under which the Supreme Court is invested with the sole and exclusive jurisdiction in constitutional and other matters and is constituted the final court of appeal of not merely what are now provinces under the present regime, but also of Indian States.

The only difference between the regime under the New Constitution and this Bill is that whereas under the New Constitution the Supreme Court will be the final court of appeal not only from the High Courts in what are known ,as the provinces, but also from High Courts in the Indian States, at present the jurisdiction of the Federal Court is confined to matters which arise or might arise under the Instrument of accession of the different States. Instead of detailing the various heads of jurisdiction, reference is made in clause 5 to all heads of jurisdiction which His Majesty in Council has been exercising before the appointed date.

There is one point which is a very important one and which I alluded to in the course of the discussion, namely, that the judgment of the Federal Court shall be enforceable throughout the Dominion of India and appropriate provision has been introduced to make the judgment enforceable.

Then I wish to make only one or two general observations. The Bill, in anticipating the provisions relating to the powers and jurisdiction of the Supreme Court, marks the final stage in the history of the relations between the Courts in India and the Privy Council and gives effect to the Principle of judicial autonomy which is becoming an essential feature of dominion status even in Dominions which acknowledge allegiance to the British Crown. Whatever might be said about the executive government under the regime which has come to an end with the Indian Independence Act, there can be no doubt that taking a broad and disinterested view of the matter, the record of the Judicial Committee of the Privy Council has been a splendid one. The reports enshrined in the volumes of Moore's Indian Appeals and later in the Indian Appeals, bear ample testimony to the worth of the Privy Council. They have enriched Indian jurisprudence in many respect including our personal law. I may mention here that in the law of Adoption itself, though earlier, owing to an imperfect understanding of the Hindu law a broad view was not taken, they have since taken a broader view even before the Indian High Courts took such a step. It has rendered notable judgments in the field of the Statute Law of India too. It has contributed very much to the development of the commercial law of India. Occasionally there might have been legitimate complaints in regard to matters affecting the liberty of the subject in which the Judicial Committee has not always taken a view which has commended itself to the Indian people. But, on the whole, the verdict of history would be in favour of the Judicial Committee and there can be no more illustrious example for our Federal Court and Supreme Court to follow than the Judicial Committee of the Privy Council.

There is however, one point which I would like to emphasise *viz*., either the Federal Court or the Supreme Court must not blindly follow the precedents of the Judicial Committee. It is hoped that both the Federal Court and the Supreme Court will evolve a jurisprudence suited to the genius of the people and the conditions of our country. The Federal Court now and the Supreme Court under the new dispensation will occupy a position of unique importance and the verdict of history would largely depend upon the independence, the ability and the learning which they would bring to bear upon their task.

Shrimati G. Durgabai (Madras : General) : Mr. President, I could not resist the temptation to speak a few words on this occasion which I consider is very important. To avoid taking up much of the time of the House I would straightaway say what I have to say.

I welcome this Bill which is going to be passed in a few seconds and which is a great land-mark in the judicial history of India. When this Bill is passed it will serve the long-standing connection existing between the Indian system

[Shrimati G. Durgabai]

and the British system in the judicial sphere. I dare say, as a student of law and also a practitioner who is acquainted with the matter this connection, has benefited our Indian law and Indian system of jurisprudence greatly. I have had occasion to read the judgments of the Privy Council and other important decisions which were mentioned by Shri Alladi Krishnaswami Ayyar just now. I felt proud of that connection which had done substantial benefit to us. Therefore we should pay a tribute to this connection from which we are now parting.

This Bill when it becomes an Act will usher in the era of judicial autonomy in India. The important changes made therein are all corollary to the political and constitutional independence of this country. When the Constitution is passed our Federal Court will be designated as the Supreme Court. It will be the highest court of appeal for all high courts and also the judicial authority for the interpretation of the Constitution. We wish and we hope that the Supreme Court which is going to be the guardian of the Constitution and of the fundamental rights guaranteed therein, will do its function very well and every citizen in India will have the occasion to say that it has protected his rights as a true guardian of this Constitution.

Sir, there was criticism heard this morning here that we are continuing the jurisdiction of the Privy Council in certain matters. May I say in reply that this will be so only in the class of cases, as Dr. Ambedkar explained, where the judgment has already been delivered or where the report has been made to His Majesty or where the cases have been entered in the list of the business of the Judicial Committee. All the other cases will be disposed of here. We have also made provision in clause 5 that if only leave has been granted after 10th October, the further steps will have to be taken only in the Federal Court. There are some 20 or 25 such cases and these, if they are not decided before 26th January 1950, will have to be taken over to India. It is only just and fair and polite on our part not to take away such classes of appeals which I have already mentioned. With these few words I commend this Bill and say that it will be a very interesting period in our history to watch the progress and functions of the Supreme Court.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, I congratulate Dr. Ambedkar that at least now he has found it necessary to bring in this Bill. On a former occasion when a Bill was brought before Parliament for enlarging the jurisdiction of the Federal Court some of us suggested that all the appeals Pending before the Privy Council should *ipso facto* be transferred to the Federal court and the jurisdiction of the Privy Council abolished forthwith—this was in 1947—we do not know why Dr. Ambedkar vehemently argued against it. I am, however, glad that before the Constitution is passed abolishing the jurisdiction of the Privy Council Dr. Ambedkar has chosen to bring in this Bill. This morning I read in the newspapers that even Canada is taking steps to abolish the jurisdiction of the Privy Council and vest that jurisdiction in their own Supreme Court. Therefore, whether we declare ourselves a Republic or not, this step ought to have been taken earlier.

I have the greatest respect for the Judges who sit in the Privy Council. Between Indian and Indian, from what I have been able to see, they have rendered justice. There may have been occasions when we did not agree with them in their judgments when the interests of Europeans and Indians clashed. Now, a heavy responsibility falls upon the Federal Court in the, matter of capacity, in the matter of integrity and in the matter of ability. In times when contending political parties are there, each contending to overthrow the other, trying to win mastery over the other, it is difficult to keep calm in that atmosphere. Therefore, all the greater responsibility falls upon the shoulders of the Judges of the Supreme Court and also the President who in future has to select proper men for filling up these posts.

The Privy Council might have given a lead in many matters, but so far as social legislation was concerned, we have our own grievances against it. It wanted to fossilise ancient practices. It considered many things under the personal law of the Hindus obsolete. An Indian Supreme Court would not have taken that view. Many things could have been accomplished by an Indian Court interpreting them otherwise. Many things are done not merely by statute law. They are allowed—to progress. If the courts can help by way of interpretation, many things can be done, many revolutions could take place without people noticing them, and progress can be achieved without the legislature embarking on any legislation. I am sure that the future Judges of the Supreme Court, when it comes into being, will certainly rise to the occasion and justify this transfer of power, this transfer of jurisdiction, from the Privy Council.

Now, so far as the jurisdiction of the Privy Council being allowed to continue even after the 10th October is concerned, I am sure that on the date on which we declare India to be a Republic, if any appeals are pending before it, they would be automatically transferred to the Supreme Court. Already there is a provision in the Transitory Provisions of our Constitution that all such appeals would stand automatically transferred to the Supreme Court.

Sir, I have great pleasure in congratulating the honourable Member that at least now he has thought it fit to bring forward this legislation. With this, the last link with the British will be going. When the British came, they tried to exercise jurisdiction over us, instead of allowing us to settle our own affairs. That link is broken now. I congratulate ourselves and I congratulate the honourable the Mover of this Bill for having brought forward this legislation.

Pandit Thakur Das Bhargava : Sir, I have very great pleasure in supporting the motion that this Bill be now passed. Our connection with the Privy Council for such a long time, is now brought to a close. We must on this occasion pay our homage to the Privy Council which has so greatly helped us in the evolution of our laws during the last 175 years. The great traditions of the Privy Council, its impartiality, it independence and its other characteristics would now have to be inherited by the Supreme Court, and we hope that the Supreme Court would rise to the same height.

Now, Sir, the system of Great Britain and the system of America which we have copied make it absolutely clear that it is the courts which are the final arbiters of the rights and liberties of the people. If we have adopted that system, it is but meet that our Supreme Court should be a court of final jurisdiction. Many countrymen of ours have taken a prominent part in the deliberations of the Privy Council on the Judicial side as Judges. I am glad that the Drafting Committee has now proposed to abolish the jurisdiction of the Privy Council and conferred that jurisdiction on the Federal Court of the same character as the Privy Council was enjoying.

Now, the King in any country has some prerogatives. I do not want to say what those prerogatives are, but it is sufficient to say that the King is regarded as the fountain of justice, that he is above the law, he has powers of reprieve and pardon, etc. The same powers are now granted to the President. Even if the courts have convicted a person, the King in his prerogative can grant pardon or reprieve.

There are many cases on the criminal side where the Privy Council in its jurisdiction upheld principles of natural justice and decided cases on such basis. It is true that in criminal matters it interfered with the lower courts on very rare occasions—as I said it was a special kind of jurisdiction—but it was always in the interests of administering justice. I hope, Sir, that now

[Pandit Thakur Das Bhargava]

that our Federal Court is invested with the same jurisdiction, the Federal Court also would rise to the occasion and do the work which every court is expected to do. Though we have not succeeded in giving our ordinary courts such supremacy over the executive, as we desire, all the same this Bill is a landmark in that it transfers to the Federal Court the jurisdiction which has been so long enjoyed by the Privy Council. I hope this will ensure justice to all individuals. I am happy, Sir, that now all cases in India will be decided by our own courts. Sir, while paying my tribute, I want to place on record our sense of gratitude to the Privy Council which has for such a long time distributed even-handed justice to all.

Mr. President : The question is :

"That the Bill, as settled by the Assembly, be passed."

The motion was adopted.

DRAFT CONSTITUTION—(*Contd.*)

MOTION RE. TRANSLATION OF THE CONSTITUTION

Shri K. M. Munshi : Mr. President, Sir, I beg to move the resolution which stands in my name :

"Resolved that the President be authorised and requested, to take necessary steps to have a translation of the Constitution prepared in Hindi and to have it published under his authority before January 26. 1950 and also to arrange for the preparation and publication of the translation of the Constitution in such other major languages of India as he deems fit."

Sir, the House is fully aware of the steps that were taken by you with regard to having a Hindi translation of the Constitution. In 1947 a Committee was appointed, with my honourable Friend, Shri Ghanshyam Singh Gupta as Chairman. That Committee produced a Hindi draft. Later, at the request of the Steering Committee, Sir, you were pleased to appoint an Expert Committee on the 15th March 1949 for the purpose of revising that Constitution. The members of that Committee, as is known to the House, were distinguished scholars associated with literary activities in different provinces in India. The members of the Committee were Shri Ghanshyam Singhji (Chairman), Mr. Rahul Sankrityayana, ex-President of the Hindi Sammelan, Mr. Suniti Kumar Chatterjee, one of the greatest experts on Indo-Aryan languages in India, Sri M. Satyanarayana, a gentleman who more than any other single person has done the utmost to spread the Hindi language in the South, Mr. Jayachandra Vidyalankar and Mr. Date, a well-known authority in Marathi. This Committee has revised the other translation; it is in the press and a considerable section of the House expected that the translation would have been completed in time to be placed before this House. But several difficulties are in the way. The time is not sufficient; it would also involve the Constituent Assembly meeting even after the November Session if that version is to come before this House; and the costs also will be disproportionate. In view of these factors, it is much better that the translation, after it has been revised either by you, Sir, or as it is produced by this Expert Committee, or revised by any other agency that you might think proper, may be published under your authority. It is absolutely necessary that on the 26th of January we should have a translation in Hindi published under your authority, the reason being that no sooner this Constitution is passed on the 26th of January, all the Indian languages will require some basic glossary and some basic translation for the purpose of adopting it in the different languages. At present what happens is, that in every province newspapers are translating the words in the

Constitution in any way they like. Some translations are extraordinarily funny and some are accurate, but it is necessary that the whole of our constitutional terminology should be published in some kind on authorized form, so that the translations in our languages may become easy. Once this constitutional phraseology becomes current, once there is one translation published in Hindi, it will be very easy to have a common terminology throughout the country. Not only that, but if there are going to be any further authorized versions, it will provide a basis for that purpose. Therefore, it is absolutely necessary that we should have this translation.

One thing more, and I have done. The experts on this Committee are in their own respective spheres the best that India could produce and no doubt their translation would be of a character which will command weight all over the country. Some expression of opinion is found in some papers that the translation is likely to be very heavy. Now that is a matter of opinion, but for the life of me, I cannot understand how there can be any version of our Constitution in any Indian language without our having to coin new words to express the legal and constitutional concepts which we have expressed in English in this Constitution. In all our languages, except Sanskrit, there is no complete vocabulary of legal and constitutional terms. Even the Sanskrit Vocabulary is inadequate and we may have to coin new words in order to express certain modem concepts of constitutional law. Therefore, it is inevitable, I submit, that whichever the translation, it will have to be largely drawn from Sanskrit. I find that there is a considerable prejudice amongst certain classes of people in this country who seem to think that even constitutional and legal terminology could be so framed as to be accessible to what is called the 'common man'. Nowhere in the world has a complex constitution like this bristling in every section with different constitutional aspects been worded in easy or so popular language as to be accessible to the common man. Even among our lawyers, I am sure many phrases that have been used in this Constitution,—phrases which have been borrowed from the American or the English Constitution—are such as are not easily accessible to an ordinary lawyer and not even accessible to lawyers of considerable standing. They are strange words to them unless they familiarize themselves with constitutional law; much more so in language like ours; and I think it is necessary that our new terminology should be largely drawn from Sanskrit introduced in words or words which are framed on the basis of Sanskrit roots. As soon as that is done, I am sure it will provide a nucleus for not only consolidating the phraseology of all our Indian languages, but lay the foundation of the new Hindi, the lines of development of which this House decided upon three days ago. With these words, I commend this resolution for the acceptance of the House.

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, Sir, while supporting generally the motion moved by my honourable Friend, Mr. K. M. Munshi just now, may I place before the House certain amendments to this motion ? I am sorry, Sir, that because this agenda was received only last night, I could not give notice of the amendments in time, with the result that my honourable colleagues have not got copies of the amendments.

I shall now therefore read them out one by one.

"(1) That in the motion, for the words 'the President be authorised and requested to' the words 'the President do be substituted.

(2) That in the motion for the words and figures "before January 26, 1950" the words 'as speedily as possible" be substituted.

(3) That in the motion, for the words "the preparation and publication", the words "the early preparation and publication" be substituted.

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(4) That in the motion, for the words "other major languages", the words "other languages" be substituted."

If these amendments were accepted by the House, the motion would read as follows :—

"Resolved that the President do take necessary steps to have the translation of the Constitution prepared in Hindi and to have it published under his authority as speedily as possible and also to arrange for the early preparation and publication of the translation of the Constitution in such other languages of India as he deems fit."

Taking amendment No. (1), I feel Sir, that the expression used in Mr. Munshi's motion is somewhat clumsy. When the House adopts a resolution, *ipso facto* the President is authorized in pursuance of that resolution. It is not necessary to state in a Resolution that the President is authorized to do such and such a thing. We resolve that the President do take steps and that itself is an authorization and a request; and 1, therefore, feel that the words "authorization and request" are unnecessary for the purpose of this motion, and moreover they detract from the dignity of a motion to be adopted by this House.

As regards amendment No. (3) which seeks to insert the words "early preparation and publication," I need not dilate upon this much. I believe that Mr. Munshi intends, and the House also intends, that the translation will be done early in other languages too, I only wish to make it very clear that this matter or this translation in other languages will not be postponed indefinitely.

Shri B. Das : Sanskrit also.

Shri H. V. Kamath : My amendment is for the addition of the word "early" and it is a slightly substantial amendment too; but I leave it to the collective wisdom of the Drafting Committee to incorporate it in such manner as they deem fit.

In the last amendment, I wish to substitute "other languages" for the words "other major languages". After all, who are we to say here which language is major and which language is minor? We have not adopted any motion or even an article on the various languages; nor have we stated in any schedule which language is major and which minor. If we adopt the motion as moved by Mr. Munshi to the effect that the translation will be in such major languages as the President may deem fit, suppose the translation is not done in some particular language, naturally the people of the country speaking that particular language will feel hurt that theirs is considered a minor language and therefore it has been omitted. It will have a bad psychological effect. To avoid any invidious distinction between one language and another, I wish to delete the word "major" and say, that the President shall order translation in such languages as he deems fit, leaving the matter to him to decide. It is not for us to say here which is a major language and in which major language or languages the President may order translation of this Constitution. The interruptions of my friends Mr. B. Das and Mr. Chaliha also show which way the wind is blowing. They also feel hurt as to the incorporation of the word 'major'. Suppose, for instance, Assamese is not included by the President,—I do not mean to suggest that it will be excluded,—or Oriya is excluded, they will feel that theirs is not a major language. Therefore, the best thing is to delete the word 'major' and say "such other languages as the President may deem fit".

Coming to amendment No. 2 by means of which I seek to substitute the expression "before January 26, 1950" by the words "as speedily as possible". I have to advance two or three arguments in support of this amendment. Firstly the House will recollect that on the closing day of the last session, we adopted a resolution about the next General election, the preparation of electoral rolls and other ancillary matters. The argument was put forth even on that occasion that

it is not proper to bind the House to a particular date; and Dr. Ambedkar had to admit in his reply to that debate that if for some reason or other we were unable to prepare the electoral rolls early enough and if therefore the elections were to be postponed beyond the end of 1950, we will have to state our reasons, bring another motion before the House and thereby get the original motion amended. Therefore, it is not wise I think to specify any definite date. I hope, may, I am almost sure, that the Committee which the President will set up win strenuously labour at this task of translation and get the translation ready even before, long before the 26th of January. But, there is many a slip between the cup and the lip and unforeseen circumstance at times arise which upset the plans of men. Therefore, I think it would be the part of wisdom to delete any reference to any particular date and just say, as speedily as possible. It may be ready even in a month's time. If you fix a date, it is likely that it may be published just the day before, the 25th of January. That would be within the ambit of the motion which we are discussing.

I would however request and I would plead strongly that the Hindi translation of this Constitution must be ready long before January 26, 1950, even within a month or six weeks, so that if possible, this Hindi translation of the Constitution may be brought before the House during the Third Reading of the Constitution. For that purpose, I would not mind even if the Third Reading is so adjusted that it falls, say in early December or even early January. When once we have passed the Second Reading of the Constitution and the Electoral rolls are being prepared at a pretty fast pace in the country, there is no reason why we should hustle the Third Reading of the Constitution before the Hindi Translation is ready.

We have adopted Hindi as the State Language and Official language of the Union only two days ago. It is therefore only right and proper, and in the fitness of things that at the Hindi translation at any rate the State language translation should come before the House at the Third Reading of the Constitution. For that purpose, I would suggest that the Third Reading of the Constitution be postponed to early December or, even early January; and we can be ready with the final draft in English and Hindi before the 26th of January. If unfortunately something happens, some circumstances arise owing to which we cannot adopt the constitution, and promulgate or inaugurate our republic on the 26th of January 1950, 1 feel there is no reason to feel any compunction on that score because to my mind, though the 26th of January has got its own sanctity as being the Independence Day on which twenty years ago we took the pledge of Independence, yet it is conceivable, it is likely that we may have yet another date in our National Calender. After the 15th of August 1947, last year and even this year, the 26th of January has been observed as Remembrance Day and not as Independence Day. Now, if this Constitution proceeds at its usual pace we need not hurry it up just to synchronise it with Independence Day, the 26th of January. I have no objection to that date : I would welcome that date. But, if it is not finished by that day, we can have a new date in our National Calendar, call it the Republic Day.....

Mr. President : You are discussing a subject which is not germane to the motion.

Shri H. V. Kamath : The date, January 26, is there mentioned in the motion I thought that has reference to Independence Day. I am not dilating on it. I only feel that we may have a new date in our National Calendar, call it a Republic Day and celebrate it annually. I only feel that the Hindi Translation of the Constitution must be before the House during the Third Reading of the Constitution, especially, in view of the fact that Hindi has been adopted as the State language, the official language of the Union just a few days ago. If the Third Reading is passed without the Hindi Translation before the House, I think we would be doing a wrong to this very House which has adopted this language as

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the State language and official language of the Union. I commend my various amendments to the House for their consideration and acceptance.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General): Mr. President, Sir, I stand here to support the motion of Shri K. M. Munshi but I must confess that I am not very happy over it. If I had my way. I would very much have liked that the Hindi version of the Constitution also could have been adopted by this House. It was also your desire that the version in the official language of the Union should be passed by the House but there were obvious difficulties also. The question of the official language was not decided earlier and therefore the time left is very short. If earlier decision had been taken about the official language of the Union, then it would have been more easy for us to pass the Constitution in our own national language also. But as it is, it seems to me that this is probably the best under the circumstances.

But, Sir, I appeal to the House about one thing. There is no doubt that we have decided that English shall go. It shall go during the period of fifteen years or earlier and in some respects it might take a longer time, but when English goes and English is replaced in the Centre by our official language Hindi, then at that time we will only be left with the authoritative text of the Constitution in English and only a translation in Hindi. I would very much wish that the Steering Committee and Dr. Ambedkar in their deep wisdom might find a way in which we could say that the provision is there that we have our authoritative version of the Constitution also in Hindi which can be used say after about fifteen years. As the resolution stands by itself, even after twenty or twenty-five years we would only have the translation. It will not have the sanctity which attaches to a Constitution adopted by the House. It will be absent in the translation in our national official language Hindi.

What I would very much request Dr. Ambedkar and the Drafting Committee to consider is to find out a formula by which some day we may be able to say that this Constitution which is in Hindi has the sanctity of the Constitution passed by the House itself and not merely that of a translation. There is section 304 but then I find that that section would not be quite sufficient for the purpose. If the Drafting, Committee could draft another provision in this Constitution itself by which some such provision is made that after English ceases to be the official language of the Union, we may have our Constitution in Hindi adopted by the Union Parliament to which the same sanctity could be attached as it it was passed by the House, I would be very happy. This is the side of the case which I must humbly but most emphatically wish to bring to the notice of the Drafting Committee. I am sure that the ingenuity of the Drafting Committee will evolve a formula by which this would be possible and our sons and grandsons will not be left in the position in which they will say that there is no such, thing as sanctified Constitution in our national language, and the sanctified constitution is only in the English language. That will not be very creditable for us. Even a small country like Ireland drafted their Constitution in both the languages, in their own language and in the English language. But they took very early steps and therefore it was possible. I do understand and realize the difficulties but I would appeal that a way should be found out in which what have said may be possible.

Now I have the good fortune of being associated with the Hindi translation from the very beginning and I know the difficulties of translation. Therefore I do realise that our words have to be settled. They have to get implications and that is bound to take some time. I will not like to take the time of the House to show as to how we are proceeding with this translation. In choosing of a vocabulary which has any technical significance we take good care that the vocabulary is such as is acceptable not only to the Hindi area but to all the regional languages of the country—Marathi, Bengali, Gujarati and the languages

of the South. Any word which is not acceptable to Shri Satyanarayanji or to Dr. Chatterjee or to Shri Date, we reject. We take words which are unanimously agreed upon so that we may have the basis for future terminology of technical term (so far as the Constitution is concerned) not only for Hindi but for all the major languages of India. And our difficulties have been very very great indeed. I can tell this House what I have often told you that I have never devoted so much time, so much energy and so much attention even as a student in any of my studies, as I have devoted to the work which you were pleased to entrust to me and my colleagues. I support the motion.

Dr. P. S. Deshmukh (C.P. & Berar: General) : Mr. President, I must confess I am somewhat unable to understand the purpose and necessity of this resolution. We are going to request and authorise the President to take necessary steps to have a translation of the Constitution. I do not think your authority was limited even as the President of this Assembly, to have a translation not only in the Hindi language but in the various languages of India. Secondly, this authority does not mean that the translation the President is going to get prepared is going to be the authorised translation. If this resolution was at all necessary, it should have been provided that any such translation which the President will promulgate shall be the authorised and recognised translation of the Constitution.

My second difficulty is, I do not know when the President is going to come into being. If the Constitution is to be promulgated on the 26th January, 1950, then what is the sense in saying that the translation should be prepared before that date ? I do not conceive, that unless this Constitution comes into being and is promulgated, the President- can come , into existence. If the President cannot come into existence before 26th January, 1950, what kind of translation is to be published before that date I am unable to understand.

Shri R. K. Sidhwa (C.P. & Berar: General) : The President of the Constituent Assembly is already there.

Dr. P. S. Deshmukh : If it is the President of the Constituent Assembly, then I beg pardon. I took him to be the President of the Union. If it is the President of the Constituent Assembly, who is meant I do not think the resolution is necessary. The work of translation is already going on and we can provide that the translation prepared by the President, or published by or through him should be the official translation which shall be recognised by everybody,

Then Sir, I think there is no necessity for the changes which have been suggested by my friend Mr. Kamath. 'The wording as it stands would probably serve the purpose. But in any case, the word "major" should be altered, or omitted altogether. It is especially difficult to define what are major and minor in this connection. It is not the phraseology we have accepted anywhere and it is therefore better to omit the word altogether.

Then I support the suggestion made by Mr. Gupta 'so far as accepting the translation as the only version of the Constitution, at some date or the other, and the sooner it is done the better. If it is our intention that after fifteen years period Hindi should be recognised as the only official language, that it should be used more and more, then the best place where it should be brought into use is the law courts I am sorry to see that in the various law courts and in the High court, English is to be the language in use. I differ very vehemently on this point. The language in the law courts is very important because it results in so many other things. If the, law courts are to use English, the lawyers will perforce have to be proficient in English and there will be so many others who will have to give preference to English. Therefore having the Constitution in Hindi and recognising it as the only

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correct version is very important from many more points of view than the point of view of convenience only. And if it is our intention that Hindi should be recognised more and more, it should be possible for the President of the Union to declare that from such and such date, the English version of the Constitution shall cease to have effect and that the Hindi Constitution will be the only one to be referred to and interpreted by law courts. I think this suggestion is very welcome and I hope it will be possible for Mr. Munshi to accept it.

Seth Govind Das (C.P. & Berar: General) : *[Mr. President, Sir, I am very much dissatisfied with the resolution moved by Mr. Munshi. You might remember that years back I raised the question of adopting the Constitution in our National language. Whenever the Constituent Assembly met in session and I got an opportunity of speaking, I placed before you the proposal that our Constitution should be adopted in our own language, You might remember that whenever I raised this question you gave the assurances that the Constitution to be adopted will be in our own language. The resolution moved in the House means that the Constitution will be translated into Hindi. It will only be a translation and not the original one. When English is going to be altogether banished. I fail to understand how we will carry on our work if the original draft of our Constitution would be in English.

This resolution means that we still want to maintain English on the same pedestal which it occupied during our slavery. I want to tell you that whatever difficulties we may be conronted with, we feel even today that the original draft of our Constitution should be in our national language.

We have been meeting in this Constituent Assembly for the last three years, it was after thousands of years that we got an opportunity to have this Constituent Assembly. Is it not possible for us to meet for a month more for this work ? If we cannot meet now, we can do so after some time. We want to adopt the Constitution on the 26th of January next, and we have sufficient time at our disposal. During this period we can set aside a month to adopt our Constitution in Hindi. The resolution put forward by the Steering Committee in this regard was altogether different from the resolution moved by Mr. Munshi today.

We know that there are a number of Members in the Constituent Assembly who do not understand Hindi, but I would like to say that there are some Members also who do not understand English. A number of Members do not understand many words used in the Constitution. It is possible that when we shall place before this House our constitution in Hindi, many of its words also would not be understood by a number of Members. But this is no argument for not adopting the Constitution in Hindi. When we are adopting the Constitution in English, even though a number of Members do not understand many of its words, there should be no difficulty on the same ground to adopt our Constitution in Hindi also. When we have accepted Hindi as the *lingua franca*, as the State language it is very necessary that our original draft of the Constitution should be passed in Hindi after the English version of the Constitution is adopted. It should not be a translation. It should be the original Draft. The Constitution in English too be brought into force together with it as is the case in Ireland. I want to say with emphasis that the original draft of the Constitution should be framed in our own language and if there is any difference anywhere in our original draft and the English draft, the original draft should be taken as authentic and not the English draft.

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*[ ] Translation of Hindustani speech.

This is a question of our prestige. This is a question of our national prestige. Ours is a vast Country and it has a big population. It has an old history and old culture. If after the dawn of freedom in such country its Constitution is not framed in the language of the country, it would be a matter of deep and unlimited humiliation and shame for us. I am very much dissatisfied with the resolution moved by Mr. Munshi, and I want to tell you that the time has come for fulfilling the promise made by you at the time we commenced our work. At that time it was said that so long as the question of the national language is not decided this cannot be done. Now the question of the national language has been solved and there is no difficulty in fulfilling that promise. Whatever has been done in this House from beginning to end in regard to Hindi has not been right. The effect of all that has been that there is discontent among the people and they are taking no interest in our work, although the people of a free country should take sufficient interest in the framing of their constitution. If we do not adopt originally our Constitution in our national language, there is bound to be discontent among the people and they would take absolutely no interest in the Constitution.

In the life of a nation such difficulties present themselves many times, and I appeal to you that it should be the primary duty of our leaders to solve these difficulties. Whatever may be the difficulties we should remain firm and stick to our ideas and objectives. At the outset the Steering Committee had accepted that our Constitution should be framed in Hindi and that a Committee of the House should be appointed to formulate it. We should sit for a month and consider all the Drafts that have been prepared so far and should adopt our Constitution in our national language.]

Shri R. K. Sidhwa : Mr. President, Sir, I wholeheartedly support the motion moved by Mr. Munshi. I attach great importance to the publication of this Constitution in various languages, particularly in Hindi. I also attach even greater importance that this Constitution in the various languages should be published particularly on the 26th January, 1950. We have adopted Hindi as our national language and to publish only the English version on the 26th January, and the Hindi one later as was suggested by Mr. Kamath, would not be proper. It is essential that the two must be published simultaneously. I would even wish that the publication in the various other languages, I mean the fourteen languages which we have passed in the Schedule must also be done as early as possible. But I know the difficulties you, Sir, will be confronted with. Therefore it has been said that the English and Hindi versions shall be published by the 26th January, and as for the others, it has been left to you to see that they are brought out as early as possible. A very large number of people who could really take advantage of reading this Constitution in their languages should be enabled to do so. Therefore, the translation of the Constitution in these languages should be published as early as possible. I hope it is not intended by "such other major languages of India" that the Constitution should be restricted only to a few languages. The major language means those who would the larger number.

At an earlier stage we had stated in this Constituent Assembly that the Draft Constitution should be given the widest publicity and I think you, Sir, also stated that a very large number of copies will be published. But I may state that in January of this year I was addressing a public meeting on the Constitution. Visitors after visitors stated that they applied to your office and also to the book-sellers and to the Bombay Government but they could not get any copy. I found on enquiry that all the copies were exhausted.

Dr. P. S. Deshmukh : Are you referring to the English copies or to the translation ?

Shri R. K. Sidhwa : I am referring to the English copies. We had stated that the people should take interest in the matter, acquaint themselves with it and as a matter of fact express their opinions through the medium of the press and also by sending them to the office of the Constituent Assembly. I do not know how many copies were printed. I make a suggestion that a very large number of copies of the Constitution in English and Hindi should be published on the 26th January so that everyone who so desires should be able to get a copy.

I would also make one other suggestion that you, Sir, on your behalf and on behalf of this Assembly should give a short synopsis of what we have done during these three years and what are the special features of the Constitution. It should be available both in Hindi and English. That will be interesting and people would like to read it.

As regards the suggestion made by my Friends Seth Govind Das and Shri Ghanshyam Singh Gupta I do appreciate that this Constitution in Hindi should have come here. But it is really difficult if you want to go clause by clause. And it has to go clause by clause—every Member has a right to discuss the Constitution clause by clause in Hindi as we have passed it in English. Of course they cannot make any special suggestions now. But in regard to the translation there are many experts in Hindi here. They will say 'this word is not suitable, this should be there' and they have a right to say so. I do not agree with Seth Govind Das that it can be done in one month. It will take six months if you want to pass through all the stages.

While I admit the force of the argument I would like to make a suggestion. Eventually the Hindi Constitution will prevail because within fifteen years or after fifteen years English will go. Therefore we must have a duly authenticated Constitution in Hindi. It will not be the version that you will be publishing. In my opinion something has to be done and that is later on it has to go to Parliament for this purpose. The Hindi translation of the Constitution must be an authenticated translation for the purposes of interpretation in the Supreme Court. Where there is a difference of opinion in the interpretation it is very necessary. I do appreciate that point of view. Now only the English Constitution will be there for the purpose of interpretation. But English has to go. Therefore the Hindi translation must be an authenticated one. This Constituent Assembly will be dissolved and therefore it cannot meet. My suggestion therefore is that some arrangement should be made for this purpose. If it is necessary to be made a clause in this Constitution I have no objection. But the matter must go to Parliament and Parliament must have the power to pass that Hindi translation.

I appreciate that Hindi now having been recognized the Hindi translation should have the fullest support of this Constituent Assembly, that is to say, the Third Reading of the Constitution in Hindi should have been passed by the Constituent Assembly. But practical difficulties come and it will not be possible for us to bring in this Constitution on the 26th of January, 1950. I strongly support the motion and I hope you will bear this little suggestion of mine that it will be very much appreciated if you attach a little brochure explaining what we did for three years, what immense work we had to do, how we had to change clause after clause and article after article, and what an amount of effort and work has been done by the Constituent Assembly. Let it not be misunderstood by the public that we have wasted so much time. On the contrary I consider that if we have lengthened the period of this Assembly it is for the advantage of the country. What we did in 1948, half of it we have scrapped now. After gaining experience and after mature consideration we have introduced many important articles. I very much appreciate that. I am not at all sorry—I am glad that the period has been

somehow, by God's act, extended. It was not the desire of the Members of this Assembly that the period should thus be extended. We had wanted to pass it earlier in 1948. But God preferred that it should be extended. It is very good that as a result of this extension, after full consideration and in the light of the experience that we gained in the country, we have been able to change many of the articles.

With these words I strongly support the motion.

Mr. President : Mr. B. Das.

Shri T. T. Krishnamachari : Sir, the question may now be put.

Mr. President : I have already called Mr. Das.

Shri B. Das : Sir, I support the resolution moved by my honourable Friend Mr. Munshi. I do hope he will see the points brought forward by my Friend Mr. Kamath and accept his third and, fourth amendments. I do not like my Friend Mr. Kamath asking us to pass a resolution that the President "do take the necessary steps". The President has been our mouthpiece, the embodiment of our conscience, the embodiment of the spirit of this House over the sovereign Constitution which we have framed. Whenever any contacts take place with the outside world it is the President that has represented all our sovereign rights, all our conscience, all our hearts, and corresponded with them. So it is not for me to say that the President "do this". If I had drafted this I would have done away with the words "The President be authorised". I would have only said that "the President be requested to take necessary steps" and that satisfies me because we have trusted him and he will carry out the will and the wishes of this sovereign Houses as our chosen head and as our mouthpiece.

As regards the suggestion, which has also been supported by Mr. Sidhva and Dr. Deshmukh that the translation should be made available in all the languages that have been included in the Schedule as early as possible. I would suggest a *modus operandi* for that. We find that whenever any Bill is introduced in the Parliament at once the Provincial Governments take steps to translate it in the Provincial languages and circularise it or publish it in their gazettes. So, if the Honourable the President can take advantage of the existing machinery of the various Provincial Governments, then the translations in the languages—of course the translation in regard to Hindi will be the official version that will come from my friend the Honourable Sjt. Ghanshyam Singh Gupta—but the translation in the other languages could easily be done within a month's time and then on the 26th of January 1950 all these translations—in Oriya, Assamese, Bengali, Gujarati, Telugu, Tamil, Kannada and every other language of the fourteen languages—will be available. Whether a translation in Sanskrit will be available I do not know. We will have to approach the various Pandits headed by my Friend Pandit Lakshmi Kanta Maitra and ask them whether they can work over it and produce a translation for the Pandits that inhabit the sacred places of India. But I do hope my Friend Mr. Munshi will accept Mr. Kamath's suggestion, modified by Mr. Sidhva, of having the translations in the other languages as described in the Schedule to the Constitution.

Sir, I will echo the feelings of the House if I say that the House is grateful to my honourable Friend the Honourable Sjt. Ghanshyam Singh Gupta for the labour and efforts that he has devoted to the Hindi translation. Whether it will be the accepted version ten years hence I cannot say, but it must be the accepted version in the country from the date it is published by your orders. But as regards the suggestion of my Friend Seth Govind Das that the Constituent Assembly should be prolonged infinitely and should pass the Hindi version, Sir, though I agree with the sentiment I do not agree with the Proposal. Although the Constituent Assembly has continued for three years

[Shri B. Das]

and we are hoping that on the 26th January next we will declare a Republic when this Constitution will be promulgated, still to quote Mr. Kamath, "there is many a slip between the cup and lip". We saw two years ago the people of France had three Constituent Assemblies; they drafted three Constitutions, they are carrying on their faltering existence in some way on the 3rd draft.

Whether this Constitution will outlive all times, I cannot say. Already I hear criticisms from my friends the Socialists and from those who have gone underground, I mean the Communists, that they do not like this Constitution at all. We are not for all times going to be the Government India—the Socialists are bound, to step in, though they will have to learn to acquire in capacity for administration of the Governments. They are mostly busy criticising the Congress and its ways—most of them were Congress members at one time or another. So, the Constitution may not be a permanent thing. Even if fifteen years hence from January 26th a Hindi version is necessary as the statutory and authorised version, by that time I believe so many amendments will have taken place in the very Constitution that it will be desirable to have the authorised translation in Hindi then. Perhaps then a new Constituent Assembly may be elected, not on the basis of franchise as the present Constituent Assembly was created but perhaps every State will send two or three representatives who will sit down and adopt the authorised Hindi version of the Constitution. But at present it will remain an educative version, it will not have any legal or statutory binding on the people. The very lawyers that preponderate in our country will seldom quote the Hindi version; they will always quote the authorised version of the English text which this House has passed.

So, that is not a very dreadful matter to me and I hope time and experience will evolve the proper form of the Hindi language so that a proper, authorised Hindi translation will be evolved at least ten years hence, when I anticipate that language will be accepted all over India as the national language and then that version of the Hindi text will be accepted as authorised text. Of course I admire his sentiment that he wants that the, Hindi version should be an authorised version which this House is not at present in a mood to sit longer and pass.

Seth Govind Das : But when will it come ?

Shri B. Das: It will come ten years hence and I will not be there, you will be there.

Sir, I do appeal to you, and we are putting our trust and confidence in you in this matter to see that the thirteen languages excluding English—I do not know if Sanskrit will come in—will have their own version and they will all be published on the 26th January next so that the countryside will know in detail as to what we did by sitting long hours, what are the rights and privileges that are conferred on them by the Constitution and what hopes they can cherish under our Independent Republican Government.

Mr. President : Closure has been moved and so I will put it to vote.

The question is :

"That the question be now put."

The motion was adopted.

Shri K. M. Munshi : Mr. President, Sir, I will first deal with the amendments moved by my Friend Mr. Kamath. I am very sorry that I am not able to accept any of his amendments. As regards the first amendment, the words "authorized and requested" have been appropriately used, firstly because the word "do" is mandatory and with reference to our President I do not think it appropriate to use a word like that, and secondly because the

word "authorized" has been used after considerable deliberation. I would have been extremely glad if the translation had been placed before this House and accepted as an authorized version of the Constitution. But as things were, it was not possible to do so.

Seth Govind Das: May I ask one question of my Friend Mr. Munshi? Is it not a fact that the Steering Committee first decided that a Committee of this house should be appointed which will go into the question and consider that translation and then that that translation should be brought here and considered as the original version?

Shri K. M. Munshi : It is an open secret, I moved those resolutions. I was keen that we should have the version accepted by the House, but the circumstances are such that it is not possible for us to do so—at least that is the view of the bulk of the Member of the House. Whatever my personal view may be or whatever the view of my honourable Friend Seth Govind Das may be, the general opinion of the House is that it is not possible to do so. Therefore, we have to accept the best possible substitute, namely, we are delegating that authority of publishing a translation to the President himself. It is a perfectly legitimate way of doing things in view of our difficulty. My Friend Seth Govind Das in his enthusiasm forgot what Mr. Sidhva said. My honourable Friend. Mr. Sidhva thinks that this version should be placed before the House and carried through, article by article, clause by clause, with the numerous amendments which the Members of this Assembly might bring forward...

Seth Govind Das : I say it can be done.

Shri K. M. Munshi : Well, it can not be done in less than 12 months because I can assure my Friend Seth Govind Das that whatever he may think about himself or whatever I may think about my capacity to translate there are quite a large number of Members here who share my Friend Mr. Sidhva's opinion that they are great experts even in the matter of translating a highly technical subject.

Seth Govind Das : I guarantee that if you bring it up it will be passed within a month.

Shri K. M. Munshi : I am not prepared to accept that view and my learned Friend need not spend his enthusiasm on the subject, but I do say that we have to reckon with Members here like my Friend Mr. Sidhva. I have suggested the best possible substitute and that accords with the general views so far as I have been able to ascertain. We do not need a discussion, in a popular House like this, on the niceties of language. It is much better that it should be left to the President to get such expert advice as he thinks proper and to produce a translation which, though not approved by the House, is approved by the experts he wants.

Seth Govind Das : The same thing as was done for English may be done for Hindi also.

Shri K. M. Munshi : Sir, I have said it once and I am prepared to repeat it again that I am carrying out the general wishes of the Members of the House.

Shri Mahavir Tyagi : (United Provinces: General) : Can you not use the word "version" instead of the word "translation" ?

Shri K. M. Munshi : I would have been very glad to do it, were it not untrue. What we are doing is a translation. 'Version' means really-speaking re-writing the whole thing in an independent manner. This is a translation. Let us pass through the stage of translation. Then we can have an independent version of the Constitution, which it will be open to the Parliament to accept as the authorised version.

Seth Govind Das : Are you going to move any such resolution that the original version may be passed by Parliament ?

Shri K. M. Munshi : I am afraid it will take an unduly long time of the House if I were to answer my honourable Friend's query.

The next amendment is of Mr. Kamath's who wants to substitute the words "as speedily as possible" for the words and figures "before January 26, 1950". 1 would feel happy if we could do it before the 26th of January, because after all it is a very technical and difficult work and cannot be turned out like cotton piece goods.

In regard to Mr. Kamath's third amendment, I see no reason to suppose that this preparation would not be done with convenient despatch.

In his fourth amendment Mr. Kamath wants the words "other major languages" to be substituted by the words "other languages". The position is this. There are many more languages in India than the fourteen that were enumerated in the Schedule to the chapter on the national language. Among the fourteen languages we have included a language like the 'Kashmiri' which, I am told, is spoken by not more than ten lakhs of people. Now, it may be that some of these languages are not in use in courts. If that is so, there is no reason why there should be a translation in that language. The whole object is that this translation should be available to all persons who will be dealing with the Constitution either in courts of law or in schools or colleges, or to people who want to familiarise themselves with the constitutional concepts embodied in the Constitution.

Pandit Lakshmi Kanta Maitra (West Bengal: General) : The Provincial Governments may be entrusted with the work of translation into different languages.

Shri K. M. Munshi : The President has been given the discretion to select such languages as he considers to be the major ones. It may be a waste to spend money on translation into, take, for instance 'Cutchi'. 'Cutchi' is a sort of language, though all Cutchies speak Gujerathi. Why should there be a translation in 'Cutchi' ?

Some Honourable Members : 'Cutchi' is not a language.

Shri K. M. Munshi : Therefore we must give the President full discretion to deal with this matter, I, therefore, request the House to accept this motion.

Shri H. V. Kamath : Is my honourable Friend aware that the Irish Constitution was adopted in Irish as well as in English by Eire in 1937 ?

Mr. President : It does not matter. That will not solve the problem even if he is aware of it. I shall now put the amendments to vote.

Mr. President : The question is :

"That in the motion, for the words 'the President be authorised and requested to' the words 'the President do' be substituted"

The amendment was negatived.

Mr. President : The question is :

"That in the motion, for the words and figures 'before January 26, 1950,' the words 'as speedily as possible' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in the motion, for the words 'the preparation and publication' the words 'the early preparation and publications, be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in the motion, for the words 'other major languages' the words 'other languages' be substituted."

The amendment was negatived.

Mr. President : The question is :

"Resolved that the President be authorised and requested to take necessary steps to have a translation of the Constitution prepared in Hindi and to have it published under his authority before January 26, 1950, and also to arrange for the preparation and publication of the translation of the Constitution in such other major languages of India as he deems fit."

The motion was adopted.

Mr. President : Now that the Assembly has adopted this resolution I wish to say a few words, because it now falls upon me to implement it and I want the assistance and co-operation of the Members of this House, as also of others who may be interested in this subject, to help me in implementing it. So far as the Hindi translation is concerned, it has made considerable headway under the Chairmanship of Shri Ghanshyam Singh Gupta. We shall see how far that translation is acceptable and we shall also consider in that connection how far the particular expressions which have been used for technical words are acceptable to most of the languages of the country. For example, we have a word like "assembly" which is translated in different ways in different languages. It would be in the interests of the development of the country as a whole if we could have one uniform vocabulary for such expressions, at any rate for those parts of the country where the languages spoken are of Sanskritic origin.

In appointing the Committee which is now working on the Hindi translation, I took care to have representatives from different parts of the country and people who might be considered more or less as authorities on the subject. Even then I shall take further care to see to it that the expressions which are adopted finally are such as will, as far as possible, be acceptable to all the languages.

I, therefore, suggest to honourable Members present here who represent practically all the provinces and all the languages to give me some names. They should, in the first instance, discuss amongst themselves so that I might be able to say that these are the names suggested by the representatives of the various languages spoken in the country who are Members of the Assembly. Take, for example, our Tamil-speaking Friends. I would expect them to give me one or two names; I would expect the Telugu-speaking Friends to give me one or two names; I would expect the Bengali-speaking Friends to give me one or two names. Similarly if all the Members representing the various provinces and the languages will give me the names I would make a selection and appoint a Committee which will sit and finalise the vocabulary, so far as the constitutional and technical terms are concerned. If that is once accepted ....

Sardar Hukum Singh (East Punjab: Sikh) : What about Punjabi-speaking areas ?

Mr. President : I have mentioned only two or three, by way of example. You are certainly welcome to give me the names you like.

If that vocabulary is once accepted, our work will become very easy. Then the translation will be a running thing which can be easily done.

I propose also to address the various Provincial Governments to assist me with the co-operation of their Translation Departments and any experts that they may have in their own employ. If I get these names soon, I think the work of translation could be expedited.

I believe there are many translations already made in various languages. Those translations might also be utilised and I would request Members who have information about those translations to give me information with regard to them.

Shri V. I. Muniswamy Pillai (Madras: General): May I know when the tram selection will be over?

Mr. President : As soon as possible. But there is this difficulty which the House will bear in mind. We have not finalised the Constitution as a whole. There are still many articles which have to pass the Second Reading stage. Whatever translation is prepared now will be only with regard to the articles which have been finalised so far as the Second Reading is concerned. There may be some changes made further, but they will be only minor changes.

As regards the Hindi I translation that work is proceeding on the basis of the articles finalised from day to day in the House. There is no other translation being prepared in that sense under our authority. But now that you have asked to get translations prepared in other languages also, I think this is the best course I can adopt in the circumstances. I hope the House will give me authority and approval to this plan.

Shri K. M. Munshi : May I respectfully suggest that, if Members can give the names by this evening, then it will be possible for you to announce the names this evening ?

Mr. President : I do not think they will find it convenient to give the names by this evening. I would not limit the time to this evening.

Shri V. I. Muniswamy Pillai : Should the selection of names be confined to the members of this House.

Mr. President : Not necessarily. They may be outsiders also. They should be experts whose translation will be accepted as authoritative in their own languages. I shall have to depend upon the authority which those people carry to get the translation accepted by their own people.

Shri M. Ananthasayanam Ayyangar : Are the translations likely to be long delayed?

Mr. President : They will have to expedite the translations as soon as possible.

Babu Ram Narayan Singh (Bihar: General): In the beginning you announced that the Constitution will be passed in Hindi.

Mr. President : That was my wish and intention, but I find that it has not fructified and it is not possible. That is all I can say. Members are familiar with the events that have happened and the circumstances under which I had to give up that idea.

Article 303.—(*Contd.*)

Mr. President : Now the House will proceed to the next item on the agenda. Consideration of article 303 may be resumed. There are no amendments to sub-clauses (k) and (1). Therefore I will put them to vote. The question is:

"That sub-clauses (k) and (1) stand Part of article 303(1)."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : I move:

"That after sub-clause (1) of clause (1) of article 303, the following sub-clauses be inserted namely :—

'(II) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—

(i) any court in the territory of India constituted or reconstituted ended this Constitution as a High Court, and

(ii) any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution.

(III) "Indian State" means—

(i) as respects the period before the commencement of this Constitution, any territory which the Government of the dominion of India recognised as such a State; and

(ii) as respects any period after the commencement of this Constitution, any territory not being part of the territory of India which the President recognises as being such a State.' "

Mr. President : There is no amendment to this. As no one wishes to speak on this I will put it to vote.

The question is :

"That after sub-clause (1) of clause (1) of article 303, the following sub-clauses be inserted, namely :—

'(II) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—

(i) any court in the territory of India constituted or reconstituted under this Constitution as a High Court, and

(ii) any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution.

(III) "Indian State" means—

(i) as respects the period before the commencement of this Constitution, any territory which the Government of the Dominion of India recognised as such a State; and

(ii) as respects any period after the commencement of this Constitution, any territory not being part of the territory of India which the President recognises as being such a State.' "

The amendment was adopted.

Mr. President : The question is :

"That sub-clause (m) and (n) stand part of article 303(1)".

The motion was adopted.

(Amendment No. 141 was not moved).

The Honourable Dr. B. R. Ambedkar : I beg to move:

"That after sub-clause (n) of clause (1) of article 303, the following sub-clause be inserted, namely :—

'(nn) 'Ruler' in relation to a State for the time being specified in Part III of the First Schedule means the person who for the time being is recognised by the President as the Ruler of the State and includes any person for the time being recognized by the President as exercising the powers of the Ruler of the State. and in relation to an Indian State means the Prince, Chief or other person recognised by the Government of the Dominion of India or the President as the Ruler of the State;' "

Mr. President : There is no amendment to this. I will put it to vote.

The question is :

"That after sub-clause (n) of clause (1) of article 303, the following sub-clause be inserted, namely :—

'(nn) 'Ruler' in relation to a State for the time being specified in Part III of the First Schedule means the person who for the time being is recognised by the President as the Ruler of the State and includes any person for the time being recognised by the President as exercising the powers of the Ruler of the State, and in relation to an Indian State means the Prince. Chief or other person recognised by the Government of the Dominion of India or the President as the Ruler of the State;' "

[Mr. President]

The amendment was adopted.

Shri. H. V. Kamath : May I ask Dr. Ambedkar what exactly is the point in mentioning that 'securities' includes stock ? Why not mention shares also?

Shri T. T. Krishnamachari : I may mention, Sir, that the word usually used in respect of Government securities is 'stock' by the British Parliament.

Mr. President : There are no amendments to sub-clause 'o'.

The question is :

"That sub-clause (o) stand part of article 303(1)"

The motion was adopted.

Mr. President : I think we had better stop here.

Before we adjourn, there is one thing I desire to mention. I have received a letter addressed to me by Mr. Z.H. Lari, a Member of this Assembly. He has resigned his Membership of this House and in the letter of resignation he has mentioned certain reasons connected with the discussion about the language question which we had the other day. He has asked me that I should read out his letter to the House. I find, however, that before the letter reached me a copy of it was given to the Press and the substance of the letter has already appeared in the newspapers. That being so I do not think it is necessary that I should read out this letter to the House. Of course I shall take the other action that is necessary in connection with it.

Shri Jaspat Roy Kapoor (United Provinces : General): On a point of order. If this House is going to take any cognisance of this matter, I think the contents of it may as well be discussed, and the Assembly given an opportunity to express its view on that letter.

Honourable Members : No, No.

Shri Jaspat Roy Kapoor : I am not suggesting that it should be discussed. My only submission is that the Assembly should not be considered to have taken cognisance of the contents of that letter.

Shri M. Thirumala Rao (Madras: General) : On a point of information, is it necessary that this letter should be placed before the House or the Members of this House should know the contents of that letter. I do not think it need be placed before the House.

Mr. President : If the matter had not been published, the question of reading it to the House may have arisen. I cannot say what decision in that case would have been, but since it has already been published, the question of reading it to the House does not arise.

Shri R. K. Sidhwa : He should have had the courtesy not to publish it.

Shri Mahavir Tyagi : Is the formality of acceptance either by the House or by the President necessary ? The very fact that the resignation has reached ...

Mr. President : As I have said, I shall take action under the rules. Under the rules, I am authorised to accept resignations. That matter does not concern the House.

The House is adjourned till 4 o'clock this afternoon.

The Assembly then adjourned till Four of the Clock in the Afternoon.

The Assembly reassembled after lunch at Four of the Clock in the afternoon. Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair.

Article 303 (*contd.*)

Mr. President : We shall take up item (p) of article 303 now.

Shri T. T. Krishnamachari : There is no amendment to this.

Mr. President : The question is:

"That sub-clause (p) stand part of article 303(1)."

The motion was adopted.

Mr. President : Then we shall take up sub-clause (q). Is there any amendment to this sub-clause ?

Shri T.T. Krishnamachari : There are amendments Nos. 3224 and thereafter standing in the name of Mr. Santhanam and others. I do not think they are being moved.

Mr. President : The question is :

That sub-clause (q) stand part of article 303(1)."

The motion was adopted.

Shri T. T. Krishnamachari : Mr. President, Sir, I move :

"That for sub-clause (r) of clause (1) of article 303, the following sub-clause be substituted :—

'(r) 'railway' does not include tramway, whether wholly within a municipal area or not.' "

Sir, may I move the other amendments to sub-clauses (s), (t) and (u) because they are consequential ?

Mr. President : Yes.

Shri T. T. Krishnamachari : Sir, I move:

That sub-clauses (s), (t) and (u) of clause (1) of article 303 be omitted."

This is consequential on the revision that we have made in the entry in List I in Schedule VII. There is no need to define Union Railways, State Railways or Minor Railways separately.

The Honourable Shri K. Santhanam (Madras: General) : I only want to know whether tramway is defined anywhere. There is no fundamental difference between a railway and a tramway, except that one is called a railway and the other a tramway.

Mr. President : It is for this reason that it is sought to state that a railway does not include tramway.

The question is:

"That for sub-clause (r) of clause (1) of article 303 the following sub-clause be substituted:—

'(r) 'railway' does not include tramway, whether wholly within a municipal area or not.' "

The amendment was adopted.

Mr. President : The question is:

That sub-clauses (s). (t) and (u) of clause. (1) of article 303 be omitted"

The amendment was adopted.

Shri T. T. Krishnamachari : There is no amendment to (v).

Mr. President : The question is:

"That sub-clause (v) stand part of article 303(1)."

The motion was adopted.

Shri T.T. Krishnamachari : Sir, will you take up amendments 203 and 204 together?

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That with reference to amendment No. 147 of List IV (Eighth Week). for sub-clause (w} of clause (1) of article 303, the following sub-clause be substituted:—

'(w) 'Schedule Castes' means such castes, races or tribes or parts or groups within such castes, races or tribes as are deemed under article 300 A of this Constitution- to be Scheduled Castes for the purposes of this Constitution.' "

The only change is, the word 'specified' has been changed to 'deemed', Sir, I move :

"That with reference to amendment No. 148 of List IV (Eighth Week), for sub-clause (x) of clause (1) of article 303, the following sub-clause be substituted :—

'(x) 'scheduled tribes' means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 300 B of this Constitution to be scheduled tribes for the purposes of this Constitution,"

I am incorporating the other amendment which has also been tabled.

Shall we take up, the two other articles also at the same time?

Mr. President : Yes.

New articles 300 A and 300 B

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after article 300, the following articles be inserted :—

Scheduled Castes

300 A (1) The President may, after consultation with the Governor or Ruler of a State, by public notification specify the castes, races or tribes or Scheduled Castes parts of or groups within castes, races or tribes, which shall for purposes of this Constitution be deemed to be Scheduled Castes in relation to that State.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued by the President under clause (1) of this article any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Scheduled Tribes

300 B. (1) The President may after consultation with the Governor or Ruler of a State, by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for purposes of this Constitution be deemed to be scheduled tribes in relation to that State.

(2) Parliament may by law include in or exclude from the list of scheduled tribes specified in a notification issued by the President under clause (1) of this article any Tribe or Tribal community or part of or group within any Tribe or Tribal community but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

The object of these two articles, as I stated, was to eliminate the, necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that the President, in consultation with the Governor or Ruler of a State should have, the power to issue a general notification in the Gazette specifying all the Castes and tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the purposes of the privileges which have been defined for them in the Constitution. The only limitation that has been imposed is this : that once a notification has been issued by the President, which, undoubtedly, he will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the List so notified or any addition was to be made, that must be made by Parliament and not by the President. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the Schedule so published by the President.

Mr. President : 218A.

Shri T. T. Krishnamachari : In reading it he has included that.

Mr. President : 224.

Pandit Thakur Das Bhargava : Sir, I move:

"That in amendment No. 201 of List V (Eighth Week) in clause (2) of the proposed new article 300 A the following be added at the end :—

'for a period of ten years from the commencement of this Constitution."'

I also move :

"That in amendment No. 201 of List V (Eighth Week) in clause (2) of the proposed new article 300 B the following be added at the end :—

'for a period of ten years from the commencement of this Constitution'."

I agree with the principle that for ten years to come no variation of the notification originally made by the President should be possible. Because now that special privileges of reservation, etc., have been given to the Scheduled Castes, I do not like the idea that the Executive, President or Governor or any other person may be able to tamper with that right, but after a period of ten years, when this privilege will no longer be available to the Scheduled Castes, there will be no difference between the Scheduled Castes and other backward classes which will be declared under article 301 of the Constitution. At that time there will be no meaning in taking away this power from the President in consultation with the Governor. Therefore my humble submission is that the proposed amendment be accepted to make the point absolutely clear and free from ambiguity. Unless we add these words for a period of ten years from the commencement of this Constitution, you will be taking away the power of the President to include or exclude proper classes from the purview of the notification which will he issued under 300 A and B. After the first ten years the privileges which will be open to these classes are probably under article 10 and under articles 296 and 299. I do not know of any other privileges which have been specifically given to these Scheduled Castes. Whereas I am, very insistent and conscious that these provisions should not be tampered with, I do like that these castes may not become stereo-typed and may not lose the capacity of travelling out of the schedule when the right occasion demands it. I, therefore, submit that if you put these words you will be making the whole thing elastic and the President will have the power of including or excluding after the lapse of ten years such tribes or castes within the notification.

Mr. President : Mr. Chaliha—you have two amendments. One is 205 and the other is 225. I do not know if 205 arises now.

Shri Kuladhar Chaliha (Assam: General) : Mr. President, I move;

"That in amendment No. 201 of List V (Eighth Week) in clause (2) of the proposed new article 300 B after the words 'Parliament may' the words 'and subject to its decision the State Legislature' be inserted."

I have always been fighting that the Governor should have power to safeguard the rights of the Tribes. I am glad in some measure this has been conceded. Yet I find certain amount of suspicion in that the State Legislature is neglected. The Drafting Committee has not allowed the State Legislature ,to have a voice In order to fill up that lacuna I have said that Parliament may and subject to its decision the State Legislature.

Shri. T.T. Krishnamachari : Then what is left to the State Legislature?

Shri Kuladhar Chaliha : Somehow or other I feel you have neglected it. In these you have covered a good deal which you had objected to in the past. The Governor has been given power I am glad to say. The only thing is provincial assemblies have no voice in this. Whatever Parliament says they are bound by it; but if there is anything which consistently with the orders of the Parliament they can do anything, they should bet, allowed to have the power. That is why I have moved this. However I am thankful this time that the Drafting Committee has assimilated good ideas and only provincial assemblies have been neglected. However, the Governor is there—that is an improvement—Parliament, is there and the President is there. Therefore, I Thank the Drafting Committee for this.

Mr. President : Mr. Sidhwa.

The Honourable Dr. B. R. Ambedkar : It is already covered.

Shri Brajeshwar Prasad (Bihar : General). There are some amendments seeking to add some more clauses.

Mr. President : That is a separate matter. These were all the amendments.

Shri V. I. Muniswami Pillai : Mr. President, I come to support the amendments that have been moved by the Honourable Dr. Ambedkar. These amendments deal with the definition of Scheduled Castes. As far as I can see he has made it clear that, according to the second part of it, the President on the 26th January 1950 will publish a list of such communities that come under the category of Scheduled Castes. But I would like to inform this House of the background which brought out the special name of Scheduled Castes. It was the intouchability, the, social evil that has been practised by the Hindu Community for ages, that was responsible for the Government and the people to know the section of people coming under the category of Hindus and who were kept at the outskirts of the Hindu society. Going backwards to 1916 it was in that year when Government found that something had to be done for the untouchable classes, (when they said untouchable classes, they were always understood to be Hindus,) and they had to be recognised. In Madras there were six communities that came under this classification. During the Montago Chelmsford reforms they were made ten. In 1930 when the great epoch-making fast of Mahatma Gandhi came about, then only the country saw who were the real untouchable classes. And in the 1935 Act, the Government thoroughly examined the whole thing and as far as the Province of Madras is concerned they brought 86 communities into this list or category, though there were some touchable classes also. Now, after further examination the Provincial Governments have drawn up a list and I think according to the amendment mover's suggestions, all those communities that come-under the category of untouchables and those who profess Hinduism will be the Scheduled Castes, because I want

to emphasise about the religion. I emphasise this because of late there have been some movements here and there; there are people who have left Scheduled Castes and Hinduism and joined other religions and they also are claiming to be scheduled Castes. Such convert cannot come under the ,cope of this definition. While I have no objection to Government granting any concessions to these converts, I feel strongly that they should not be clubbed along with Scheduled Castes.

Sir, I am grateful to the Drafting Committee and also to the Chairman of that Committee for making the second portion of it very clear, that in future, after the declaration by the President as to who will be the Scheduled Castes, and when there is need for including any other class or to exclude, anybody or any community from the list of Scheduled Castes that must be by the word of Parliament. I feel grateful to him for bringing in this clause, because I know, as a matter of fact, when Harijans behave independently or asserting their right on some matters, the Ministers in some Provinces not only take note and action against those members, but they bring the community to which that particular individual belongs; and thereby not only the individual, but also the community that comes under that category of Scheduled Castes are harassed. By this provision, I think the danger is removed.

I strongly oppose the amendment moved by Pandit Bhargava. The reason is that he wants to have the ten years period for observing these amendments. But he has entirely forgotten that under another article that we have already passed, or will pass the Constitution provides for the appointment of a Special officer at the Centre and also various officers in all the Provinces to go into the various disabilities of these communities and to submit a report to the President who will then be able to know whether the Scheduled Castes have reached a stage when the facilities now given to them could be withdrawn. I do not think that the reasons that he has advanced are fair and square for the uplift of the Harijans.

With these few words, I support the amendment.

Mr. President : Does anyone else wish to speak? Do you wish to say any thing Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment of Pandit Thakur Das Bhargaava.

Mr. President : Then I put the amendments. The first is the one with reference to amendment 147.

The question is :

"That with reference to amendment No. 147 of List IV (Eighth Week), for sub-clause (w) of clause (1) of article 303, the following sub-clause be substituted :—

'(w) 'Scheduled Castes' means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 300 A of this Constitution to be Scheduled Castes for the purposes of this Constitution;"'

The amendment was adopted.

Mr. President : Then the amendment regarding (x).

The question is

"That with reference to amendment No. 148 of List IV (Eighth Week), for sub-clause (x) of clause (1) of article 303, the following sub-clause be substituted :—

'(x) 'Scheduled tribes' means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 300 B of this Constitution to Scheduled Tribes for the purposes of this Constitution;' "

The amendment was adopted.

Mr. President: Then I put the two new articles 300-A and 300-B, But I first put the amendment No. 224 of Pandit Thakur Das Bhargava.

The question is :

"That in amendment No. 201 of List V (Eighth Week), in clause (2) of the proposed new article 300-A, the following be added at the end:—

'for a period of ten years from the commencement of this Constitution."'

The amendment was negatived.

Mr. President : There is no other amendment.

I then put No. 201. The question is :

"'that after article 300, the proposed new article 300-A stand part of the Constitution."

The motion was adopted.

Article 300-A was added to the Constitution.

Mr. President : Then 300-B and the amendment moved by Mr. Sidhva or Mr. Krishnamachari about adding the word "tribal". But then there is another amendment, that of Mr. Chaliha.

The question is:

"That in amendment No. 201 of List V (Eighth Week), in clause (2) of the proposed new article 300-B, after the words 'Parliament may' the words 'and subject to its decision the State Legislature' be inserted."

The amendment was negatived.

Mr. President : Then I put No. 227 of Pandit Thakur Das Bhargava.

The question is :

"That in amendment No. 201 of List V (Eighth Week) in clause (2) of the proposed new article 300-B, the following be added at the end :—

'for a period of ten years from the commencement of this constitution.' "

The amendment was negatived.

Mr. President : Then I put Mr. Krishnamachari's amendment which has really been accepted by Dr. Ambedkar—218-A.

The question is:

"That in amendment No. 201 of List V (Eighth Week), in the proposed new article 300-B—

(a) in clause (1), for the word 'communities' in the two places where it occurs, the words 'tribal communities' be substituted;

(b) in clause (2), for the word 'community', in the two places where it occurs, the words 'tribal community' be substituted."

The amendment was adopted.

Mr. President : Then I put article 300-B as proposed by Dr. Ambedkar.

The question is :

"That proposed article 300-B be adopted."

The motion was adopted.

Article 300-B was added to the Constitution.

EIGHTH SCHEDULE

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That the Eighth Schedule be deleted."

Mr. President : There are certain amendments to the Eighth Schedule. They would not arise now.

The Honourable Dr. B. R. Ambedkar : No, Sir, they would not arise.

Mr. President : The question is :

"That the Eighth Schedule be deleted."

The motion was adopted.

Schedule Eighth was deleted from the Constitution.

(Amendment No. 3749 of Volume II seeking to add New Schedule IX was not moved.)

Article 303—(*Contd.*)

Shri Brajeshwar Prasad : Sir, I beg to move:

"That in amendment No. 3234 of the List of Amendments, in clause (1) of article 303, after the proposed sub-clause (x), the following now sub-clause be added :—

'(xx) to aid and advise the President means that there is no statutory obligation that President is to be guided by ministerial advice.' "

Sir, I do not want to move (z) and have moved only (zz).

Shri T. T. Krishnamachari : Sir, I am afraid the amendments is out of order for the reason that in the article relating to the Council of Ministers we have definitely provided that the President must act in such and such a manner as prescribed in Schedule III-A. I think my honourable Friend cannot anticipate III-A and nullify the effect of the wording of that particular schedule The article referred to by me is (62) (5) (a). The amendment runs counter to the article and it cannot therefore be accepted.

Mr. President : Instead of taking it as a point of order I will dispose of the amendment.

The question is:

"That in amendment No. 3234 of the List of Amendments, in clause (1) of article 303, after the proposed sub-clause (y), the following new sub-clause be added :—

"(zz) 'to aid and advise the President' means that there is no statutory obligation that President is to be guided by ministerial advice.' "

The amendment was negatived.

The Honourable Dr. B. R. Ambedkar : Sir, I move

"That in clause (2) of article 303, the following words be added at the end :—

'as it applies for the interpretation of an Act of the Legislature of the Dominion of India.' "

The reference is to the General Clauses Act.

Shri Jaspat Roy Kapoor : I wonder whether there is any real necessity for making this. Even if it is, I do not know how far it would be correct if you have it like this "as it applies for the interpretation of an Act of the Legislature of the Dominion of India". Because, hereafter when the Constitution has come into force, there shall be no law which has been made by the Legislature of the Dominion of India. The Dominion of India will cease then and all the Acts in force within the Dominion of India will automatically become Acts of the Union.

The Honourable Dr. B. R. Ambedkar : The point is this that the General Clauses Act applies to Acts, Regulations and Ordinances. It is therefore necessary to say to which class of these laws this will apply. That is the reason why this amendment is proposed.

Shri T. T. Krishnamachari : The reference is to the General Clauses Act for the purposes of interpretation. There are three classifications so far as the General Clauses Act is concerned, namely Acts, Ordinances and Regulations. What we want is that only those particular portions which refer to Acts should apply so far as this particular clause is concerned.

Shri Jaspat Roy Kapoor : What I mean to submit is that after the Constitution comes into force there shall be no law in existence which could be said to be a law of the Dominion of India. So I think our purpose would be fully served if we say "as it applies for the interpretation of any existing Act."

The Honourable Dr. B. R. Ambedkar : I am afraid you have not examined the General Clauses Act.

Shri Jaspat Roy Kapoor : It is no use introducing some provision without carefully scrutinising it.

The Honourable Dr. B. R. Ambedkar : It had better be left to the draftsmen as to what is necessary and what is not.

Shri Jaspat Roy Kapoor : I agree that any necessary corrections should be left to the Drafting Committee. But there is no harm in admitting a mistake if it is a mistake.

The Honourable Dr. B. R. Ambedkar : I refuse to accept, it is a mistake.

Shri Jaspat Roy Kapoor : I know it is not easy to convince you.

Mr. Naziruddin Ahmad : Sir, I submit amendment No. 206 is perfectly unnecessary. Clause (2) of article 303 is absolutely clear. It says :

"Unless the context otherwise requires, the General Clauses Act, 1897 (X of 1897), shall apply for the interpretation of this Constitution."

This is quite enough. The addition of the words again, " as it applies for the interpretation of an Act of the Legislature of the Dominion of India" is absolutely unnecessary. It is ofcourse absolute, plain truth that the General Clauses Act really applies to all the Acts of the Dominion of India. In a book on literature this adjective clause relating to the General. Clauses Act would be perfectly valid, but in a legislative enactment it is unnecessary. Clause (2) is perfectly clear that the Act applies to this Constitution, the addition of the explanatory matter as it applies for the interpretation of the Dominion Act is absolutely unnecessary. All that we need say is that the General Clauses Act shall apply for the interpretation of the Constitution unless, of course, the context otherwise requires.

The Honourable Dr. B. R. Ambedkar : Sir, I have said what I had to say and after having seen the General Clauses Act right here, I am quite convinced that the amendment I have moved is a very necessary amendment.

Mr. President : The question is :

"That in clause (2) of article 303, the following words be added at the end:—

'as it applies for the interpretation of an Act of the Legislature of the Dominion of India.' "

The amendment was adopted.

Mr. President : Then clause (3). There is amendment No. 156.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (3) of article 303—

'(i) after the word and figure 'Part I' the words and figures 'or Part III' be inserted;

(ii) for the words 'as the case may be, to an Ordinance made by a Governor' the words 'to an Ordinance made by a Governor or Ruler, as the case may be' be substituted.' "

It is purely consequential.

Mr. President : The question is:

That in clause (3) of article 303—

'(i) after the word and figure 'Part I' the words and figures 'or Part III' be inserted;

(ii) for the words 'as the case may be, to an Ordinance made by a Governor' the words 'to an Ordinance made by a Governor or Ruler, as the case may be' be substituted.' "

The amendment was adopted.

Mr. President : Then I put the whole of this article 303.

The question is:

'That article 303, as amended, stand part of the Constitution."

The motion was adopted.

Article, 303, as amended was added to the Constitution.

Article 304

Mr. President : Article 304. Amendment No. 118.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

'That for article 304. the following be substituted:—

'304. An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill the Constitution shall stand amended in accordance with the terms of the Bill:

Procedure for amendment of the Constitution.

Provided that if such amendment seeks to make any change in—

(a) any of the Lists in the Seventh Schedule, or

(b) the representation of States in Parliament, or

(c) Chapter IV of Part V. Chapter VII of Part VI, and article 213A of this Constitution,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule.' "

I will move my other amendment also, No. 207. I move:

"That in amendment No. 118 of List III (Eighth Week), for the proviso to the proposed article 304 the following proviso be substituted :—

'Provided that if such amendment seeks to make any change in—

(a) article 43, article 44, article 60, article 142 or article 213A of this Constitution, or

(b) Chapter IV of Part V, Chapter VII of Part VI, or Chapter I of Part IX of this Constitution, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.' "

Sir, I do not wish to say anything at this stage because I anticipate that there would be considerable debate on this article and I propose to reserve my remarks towards the end so that I may be in a position to explain the points that might be raised against this amendment.

Mr. Naziruddin Ahmad :It is far better to give the arguments in advance to avoid any unnecessary debate.

The Honourable Dr. B. R. Ambedkar : If my friend will guarantee to me that he will not take time. I will do it, but I know my friend will have his cake and eat it too.

Mr. Naziruddin Ahmad : Sir, Dr. Ambedkar will give no argument at the beginning, saying that he will await arguments and speak in reply. But in the end on hearing arguments, he will merely say "I oppose the amendments and reject the arguments"!

Mr. President : We shall take up the amendments. No. 119.

Shri T. T. Krishnamachari : Sir, I am not moving amendment No. 119 because it is incorporated in Dr. Ambedkar's amendment. It is covered by No 207.

Mr. President : No. 157, Mr. Santhanam.

The Honourable Shri K. Santhanam : I am not moving it, Sir.

Mr. President : No. 158, Mr. T. T. Krishnamachari.

Shri T. T. Krishnamachari : That is also covered by Dr. Ambedkar's amendment.

Dr. P. S. Deshmukh : Mr. President, Sir, I move:

"That in amendment No. 118 of List III (Eighth Week), for the substantive part of the proposed article 304, the following be substituted :—

'304. This Constitution may be added to; or amended by, the introduction of a Bill for this purpose in either House of Parliament and passed in both Houses of Parliament by a clear majority of the total membership of each House. The provisions of the Bill shall not, however come into force until assented to by the President.' "

Sir, I move amendment No. 210.

"That in amendment No. 118 of List III (Eighth Week), the following proviso be added to the proposed article 304 :—

'Provided that for a period of three years from the commencement of this Constitution, any amendment of the Constitution certified by the President to be not one of substance may be made by a Bill for the purpose being passed by both Houses of Parliament by a simple majority. This will, among other things, include any formal amendment recommended by a majority of the Judges of the Supreme Court on the ground of removing difficulties in the administration of the Constitution or for the purpose of carrying out the Constitution in public interest and certified by the President to be necessary and desirable.' "

Then there is another amendment, No. 212, Sir I move :

"That with reference to amendment No. 118 of List II (Eighth Week), after article 304, the following new article be inserted:—

'304-A. Notwithstanding anything contained in this Constitution to the contrary, no amendment which is calculated to infringe or restrict or diminish the scope of any individual rights, any rights of a person or persons with respect to property or otherwise, they be permissible under this Constitution and any amendment which is or is likely to have such an effect shall be void and ultra vires of any Legislature.' "

Sir, it is obvious from the very reading of these amendments that they are alternatives to one another. My first amendment (No. 208) is an amendment to the substantive portion of article 304 as presented to the House by Dr. Ambedkar this afternoon. It's main purport is that the amendment of the Constitution should not be made as difficult as it has been sought to be done by the article proposed by Dr. Ambedkar. The main reason for my suggestion to make it easier for the amendment of the Constitution is that, in spite of the fact that we may have spent more than two and a half years in framing this Constitution, we are conscious and I am sure many members of the Drafting Committee itself are conscious that there are many provisions which are likely to create difficulties when the Constitution actually starts functioning.

Of course there have been complaints from some ignorant quarters, mainly from pressmen and journalists, who are ignorant of what the Constitution should be, that we are spending a lot of money. These are, I think, people who have just come into journalism recently and have not any idea or conception of the framing of a Constitution. I am sure, Sir, no sensible man will pay any attention to this type of journalism, because they have the ink and the pen with them and they are employed by some capitalists here and there to write out in dailies or weeklies whatever comes into their heads. I know they very often write things which are not in the public interest. I am sure, Sir, that we are not daunted by this type of criticism. In my opinion, we have not taken that much time that should have been taken, nor have we allowed many Members who have something to contribute to, the debate to do so. We have not, in fact, been acting up to the tenets and principles on which parliamentary democracies are to be worked and should work. Parliamentary democracy is known to be and shall always be a talking shop, and if this is so, it is intended that even the meanest amongst us may have something positive and beneficial to contribute and it is therefore incumbent upon us to give him a chance to have a say. That is the purpose of Parliament and if there are sometimes some long speeches I do not think that should be something we should complain against. So, my contention is that we have not devoted as much time as we should

have in allowing Members to contribute their best to be framing of this Constitution.

These, are the reasons why this Constitution is bound to be and will prove to be defective in many respects. That being so, that being inherent in the circumstances under which we are working, I think, Sir, every facility should be afforded for amending, the Constitution. If you do not provide the necessary outlets or safety-valves for the air or the storm to pass through, it is likely that the whole ship may be blown up. For that reason, Sir, I have two amendments presented here. One is that it should be possible for the Parliament to amend it without recourse to two-thirds majority. In the clause proposed by Dr. Ambedkar there is a double provision. Not only the majority of the total Members of the House should be in favour of the amendments, but when it is brought before the House and the Bill is passed by the House there should be a two-thirds majority of the Members who are present and vote. That means there is a double check so far as any Bill to be passed for amendment of the Constitution is concerned. Even if you have to change a comma, even if you have to make some consequential changes, let alone changes in the Fundamental Rights, very strenuous efforts will have to be made for bringing about that change.

At least for a period of five years I have therefore suggested in my second amendment that it should be possible for the Parliament not only to pass amendments by a majority of the House, but I have also made two other suggestions : whenever the President certifies that a certain amendment is not one of substance, is not going to vitiate or abrogate the principles of the Constitution, but being one of form obstructs the working and the proper administration or governance of India, if the President certifies that this amendment which is not of substance is necessary, it should be possible to pass that amendment with a simple majority in the House. I have also brought in the Judges of the Supreme Court because on their wisdom is going to depend much of the fate of the Constitution.

Sir, I wish to protect the Constitution wherever we have conferred any rights on our people, whether they are rights of citizenship, Fundamental Rights or they are consequential rights. For that purpose I have suggested amendment No. 212. It provides that it will be *ultra vires* of any Parliament to bring forward a Bill by which an amendment of the Constitution is sought, infringing any of the rights of individuals or groups of individuals conferred by the Constitution. I am sure this will not prevent the bringing in of measures to amend the Constitution with a view to enlarge those rights nor is this necessary. There is apprehension in the minds of the people that the liberty of the people is not safe and that as we get more and more freedom, they are not allowed even that much freedom that the foreigner allowed them. Article 15 A is not quite sufficient for the protection of the liberty of the individuals and therefore this amendment is both necessary and desirable. I hope that the House will agree that this amendment is necessary and have the article suitably amended.

I feel that at any rate for some time to come it would be necessary to amend the Constitution in many particulars. Though we have spent many months making the Constitution, there are still many defects in it. There are contradictory. provisions in some places which will be more and more apparent when the provisions are interpreted. Therefore, if we do not make it easy for amendments to be affected the whole administration will suffer. As I said in the beginning, if you do not provide outlets it might lead to, the whole, Constitution being rejected or not being accepted by future Parliaments and their resorting to something much more drastic and radical. if we do not allow them chances to mould the future of this country in their own ways, by simplifying the procedure by amendments, they will have no alternative left but to go the whole

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hog and reject the Constitution as a whole. In such a situation it is the State that will suffer. Therefore it is better to provide outlets so that any dissatisfaction with any Provision in the Constitution may easily be cured. We should not allow complaints and dissatisfaction to grow to such a pitch as will result in dislocating the administration of the State.

Shri Brajeshwar Prasad : Sir, I move :

"That in amendment No. 118 of List III (Eighth Week), in the proposed article, 304, the words 'and by a majority of not less than two-thirds of the members of that House present and voting' be deleted."

My next amendment runs thus :

"That in amendment No. 118 of List III (Eighth Week), clause (a) of the proviso to the proposed article 304 be deleted."

My third amendment is No. 299. It reads :

"That in amendment No. 207 of List V (Eighth Week), in the proposed proviso to article 304, for the words 'Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent' the word 'electorate' be substituted."

Sir, this new amendment No. 207 came into our hands last night at ten o'clock. We find that there is a world of difference between these two amendments. More powers have been taken away from the hands of Parliament and placed in the hands of the State legislatures. The effect will be that vital articles of the Constitution cannot be amended by the Parliament and the consent of 50 per cent. of the Legislatures will be necessary in order to pass an amending Bill.

I, hold the view that in this process of amendments the Legislatures of the States should not be associated. A proviso exists in the Australian Constitution to the effect that if there is a conflict between the two Houses of Parliament or if either House does not pass the amending Bill of the other, then the whole matter has to be referred to the electorate. It would be beneficial if we incorporate that provision of the Australian Constitution in our Constitution. I think that what is possible in Australia will be equally possible in India. If the people of Australia are competent and advanced to adopt this method of amendment, certainly we who are as competent as the Australians, if not more, are entitled to adopt the same method. I do not want to associate the States Legislatures in the process of amending the Constitution.

It is ordinary commonsense that should tell us that if we want to abolish landlordism you cannot seek the consent of the landlord. If you want to wait for that purpose you will never be able to achieve your object and abolish landlordism. Similarly if you want to abolish capitalism you cannot afford to look for the consent of the capitalists. The purpose of amending a Constitution in effect will be to take more powers from the hands of the State Governments and confer them on the Centre. That being so it is beyond my comprehension how any legislature will be agreeable to such a proposition. The provincial Governments constitute vested interests. They have as much vested interest in society as our capitalist friends. Therefore, adopt the simple method provided in the Australian Constitution for amending the Constitution.

Sir, I am in favour of a referendum, because referendum has many advantages. Referendum is democratic as it is only an appeal to the people, and no democratic government can have any objection to resorting to referendum in order to resolve a deadlock, when there is a conflict between Parliament and provincial governments. Secondly, I am in favour of referendum because it

cures patent defects in party governments. People think that it is too radical a weapon and that a conservative people like ourselves ought not to use it without proper consideration and thought. It is conservative since it ensures the maintenance of any law or institution which the majority. of the electors effectively wish to, preserve. Therefore it cannot be a radical weapon. Thirdly, Sir, referendum is a clear recognition of the sovereignty of the people. Fourthly, it would be a strong weapon for curbing the absolutism of a party possessed of a parliamentary majority.

In this connection I would like to read what Professor Dicey has observed in his monumental book "Law of the Constitution" which I would like honourable Members of this House to note:

> "Trust in elected legislative bodies is, as already noted, dying out under every form of popular government. The party machine is regarded with suspicion, and often with detestation, by public-spirited citizens of the United States. Coalitions, log-rolling and parliamentary intrigue are in England diminishing the moral and political faith in the House of Commons. Some means must, many Englishmen believe, be found for the diminution of evils which are under a large electorate the natural, if not the necessary, outcome of our party system. The obvious corrective is to confer upon the people a veto which may restrict the unbounded power of a parliamentary majority."

It is to obviate this evil that the method of referendum has been advocated by a man like Professor Dicey, who is not a radical or a Socialist or Communist. Professor Dicey is of the opinion that referendum will promote among the electors a kind of intellectual honesty which is being rapidly destroyed. I refer only to the last part of the amendment which seeks to substitute "referendum" for "State Legislatures."

An Honourable Member : Has he finished?

Shri Brajeshwar Prasad : I am coming to the other parts of the amendment. I do not want that the powers of the Parliament should be fettered. The method we seek to introduce by article 304 is totally detestable, totally repugnant to me. This two-thirds majority provision will act as a brake. No amendment of the Constitution will be possible if this requirement is adhered to.

I feel that even in the interests of the States, this is not necessary. The members of the Upper House of the Parliament will consist entirely of the representatives from the States and it is inconceivable that these people will under any circumstances seek to vest more powers in the Centre and take away the powers of the States. This two-thirds majority provision will act as a brake to any progressive legislation and even pave the way for revolutionary and anarchist forces in the country. I hold the opinion that at least for a period of ten years from the commencement of this Constitution, these safeguards must be removed. Sir, today we are living under abnormal conditions The effect of Partition has blurred our vision. After the migration of large populations from one part of the country to another, and after witnessing their sufferings, we are not in a position to take an objective view of things. Many other factors also have clouded our vision with the result that we are not able to take a disinterested 'view of things. At least for a period of ten years from the commencement of this Constitution, the method of amending the Constitution must be made easy.

There is another reason why I want this change. I am all for a flexible Constitution and not a rigid Constitution. There is likely to arise a revolutionary situation in Asia in the near future. In order to meet that situation, the Government of India should not be fettered in any way whatsoever. There is another reason why I am in favour of a flexible Constitution, as opposed to a rigid Constitution. I hold the opinion that we are passing through a period of decadence. It is only with the establishment of a new social order that we

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will be in a position to sense the needs of the coming century. For heaven's sake do not make your Constitution rigid.

There is yet another reason why I am in favour of a flexible Constitution. I hope friends will execuse me for my bluntness. The fear of domination of the North and the Hindi-speaking regions over the South and the non-Hindi speaking areas has mutilated this Constitution. We have framed a middle class Constitution. We have done all we could do to prevent the establishment of socialism and a unitary State in this country. The dominant tendencies of the age and the needs of our developing economy have been completely ignored. This Constitution will not survive the test of time unless we make it flexible. Our ancient law-givers were never influenced by extraneous considerations. We have sacrificed wisdom at the altar of expediency and vested interests both political and economic. With your permission, Sir, I would once again quote from Professor Dicey. (*Interruption*). I hope Members will allow me to develop my argument. Perhaps Members are not interested and do not realise the situation.

> "The twelve unchangeable Constitutions of France have each lasted on an average for less than ten years, and have frequently perished by violence. Louis Phillippe's monarchy was destroyed within seven years of the time when Tooqueville pointed out that no power existed legally capable of altering the articles of the Charter. In one notorious instance at least—and other examples of the same phenomenon might be produced from the annals of revolutionary France—the immutability of the Constitution was the ground or excuse for its violent subversion....."

Shri Kala Venkata Rao (Madras: General): Let him read slowly. We are unable to follow the speech.

Shri H. J. Khandekar (C. P. & Berar: General) : He is so hasty; I cannot follow him.

Shri M. Thirumala Rao : On a point of information, Sir. A Member who can talk extempore, can he read from a manuscript?

Shri Brajeshwar Prasad : I am reading from a book. I am quoting from Dicey.

> "The best plea for the *coup d'etat* of 1851, was that while the French people wished for the election of the President the article of the constitution requiring a majority of three-fourth of the legislative assembly in order to alter the law which made the President's re-election impossible, thwarted the will of the sovereign people. Had the Republican Assembly been a sovereign Parliament. Louis Napoleon would have lacked the plea, which seemed to justify, as well as some of the motives which tempted him to commit the crime of the 2nd of December."

I am not reading the whole chapter. I am reading only a paragraph with the permission of the President. (*Interruption*).

I think the Honourable President of the House should not be told how to conduct the business of the House. He is much more competent than anyone here.

> "Nor ought the perils in which France was involved by the immutability with which the statesmen of 1848 invested the constitution to be looked upon as exceptional; they arose from a defect which is inherent in every rigid constitution. The endeavour to create laws which cannot be changed is an attempt to hamper the exercise of sovereign power; it therefore tends to bring the letter of the law into conflict with the will of the really supreme power in the State. The majority of the French electors were under the constitution the true sovereign of France; but the rule which prevented the legal re-election of the President in effect brought the law of the land into conflict with the will of the majority of the electors and produced, therefore, as a rigid Constitution has a natural tendency to produce, an opposition between the letter of the law and the wishes of the sovereign. If the inflexibility of French constitutions has provoked revolution, the flexibility of English constitutions has, once at least, saved them from violent overthrow."

Shri T. T. Krishnamachari : May I suggest that the honourable Members may read a little more slowly and then we can at least understand what he says.

Shri Brajeshwar Prasad : I know fully well, if not the other Members of this House, Mr. T. T. Krishnamachari has read this book and he should not make this objection.

> "To a student, who at this distance of time calmly studies the history of the first Reform Bill, it is apparent, that in 1832 the supreme legislative authority of Parliament enable the nation to carry through a political revolution under the guise of a legal reform."
>
> 'The rigidity, in short of a constitution tends to check gradual innovation; but, just because it impedes change, may, under unfavourable circumstances occasion of provoke revolution.'

Mr. President : Mr. Brajeshwar Prasad, you have a number of amendments.

Shri Brajeshwar Prasad : I do not like to move any other amendment, Sir.

Mr. President : I agree they do not arise now. I think these are all the amendments that we have.

Shri H. V. Kamath : On the Printed List, we have several amendments.

Mr. President : Why do you go to the Printed List now?

Shri H. V. Kamath : Because, Sir, the article as moved by Dr. Ambedkar today minus the proviso is identical with the draft and my amendments are all to that first part of the article. The article as it stands today is identical with the old draft except the proviso, and therefore I thought that my amendments would be in order.

Mr. President : Which is the amendment which you wish to move? Let me know the amendments first.

Shri H. V. Kamath : Amendments Nos. 3239, 3241. 1 do not move amendment No. 3246. Then I come to 3248 and 3249 and 3250. They all relate to the first part of the article which is today identical with the old draft. Changes have been made only in the proviso to the article and none in the rest of the article, Sir.

Mr. President : You may move them.

Shri H. V. Kamath : Mr. President, I move, Sir, amendments Nos. 3239, 3241, 3248, 3249 and 3250 of the Printed List of Amendments, Volume II. I do not propose to move amendment No. 3246 that stands in my name in that list.

Sir, I move:

"That before clause (1) of article 304, the following new clause be inserted and the existing clauses be renumbered accordingly :

'(1) Any provision of this Constitution may be amended whether by way of variation addition or repeal in the manner provided in this article'."

Sir, I move :

"That in clause (1) of article 304, for the words 'An amendment' the words 'A proposal for an amendment' be substituted."

Sir, I move :

"That in clause (I) of article 304, for the words 'it shall be presented to the President for his assent and upon such assent being given to the Bill', the words 'it shall upon presentation to the President, be signed by him' be substituted."

or, alternatively,

"That in clause (1) of article 304. for the words 'it shall be presented to the President for his assent and upon such assent being given to the Bill, the words 'it shall upon presentation to the President, receive his assent' be substituted."

[Shri H. V. Kamath]

Sir, I move :

"That in clause (1) of article 304, the words 'to the Bill' occurring in the 11th line be deleted."

Sir, I do not know what the 11th line today is but it is the penultimate line of the first paragraph of the article.

Sir, I move :

"That before the proviso to clause (1) of article 304, the following new proviso be inserted :

'Provided that a period of not less than six months intervenes between the initiation of the Bill and its final passage in Parliament.' "

If my honourable colleagues turn for a moment to the chequered history of this article during the last two years or more, they will at once realize, the need for flexibility of a Constitution. The very changes that this article and especially the proviso to the article has undergone during the last two years proves to my mind, that the Constituent Assembly has changed its mind from time to time. If we have made several alterations like this within less than a year, then how on earth do you propose or do you dare to bind and fetter the future Parliament by making this more and more rigid than before?

Mr. President : Which amendment of yours Mr. Kamath, makes it flexible so far as that portion of that article is concerned ?

Shri H. V. Kamath : I have not moved amendment No. 3246 which might have made it more rigid.

Mr. President : You have not moved that amendment.

It is therefore I say.....

Shri H. V. Kamath : I am speaking generally on the article, and also with reference to the amendments. I will come to them in time.

Mr. President : So far as the question of the rigidity of the Constitution is concerned, by not moving your amendment, you accept that part of it.

Shri H. V. Kamath : I accept it, but certainly I hope I am at liberty to offer some observations on the article at this time, because the proviso was sprung upon us last night, it has become more complicated and swollen, and it has gathered more and more moss as time went on. The proviso, as it was originally, comprised three items; now the proviso contains clauses (a) to (e) and clauses (a) and (b) comprises so many different articles and Chapters of this Constitution. The original article in the Draft Constitution comprised only the Lists in the Seventh Schedule, the representation of States in Parliament and the powers of the Supreme Court. Today, it has had so much of accretion that one wonders, if we can change our mind so often just because we can change in time, because so much time had been given to us, why not give the future Parliament also the time and scope for changing the Constitution by making it more flexible ?

I was glad to find an amendment in the name of Pandit Jawaharlal Nehru, number 3267. I am sorry that it has not been moved. I hope that it would be moved. If that had been moved, much of the objections of the rigidity of the Constitution might have been out of place. But, that amendment, which to my mind was an important one, considering the transition through which we are passing today, to which my honourable Friends Dr. Deshmukh and Mr. Brajeshwar Prasad also made reference, if it had been moved by Pandit Jawaharlal Nehru or by the Drafting Committee and accepted by the House,

all the trouble that I foresee might have been obviated. That amendment, I suppose, is not going to be moved. Neither has it been incorporated in the draft of the article presented to the House today by Dr. Ambedkar.

Coming to my amendments, the first, No. 3239, is an introductory clause where the process of amendment is defined. What is an amendment? An amendment may mean either a variation, addition or repeal of the Constitution. If the House turns to the several constitutions of the world, the Irish Constitution or the South African Constitution or the Australian Constitution I believe, and several other constitutions, they will find that first of all, the article defines what an amendment is. I hope the House does realise that this article is second in importance only to a few other articles in the Constitution. The article dealing with amendment of the Constitution is one of the fundamental things that must be considered very earnestly by the House.

I perfectly appreciate the contention of several honourable Members that an amendment to the Constitution must not be allowed to be made lightly or easily. But, the argument on which that dictum is based is that the Constituent Assembly of any country is superior in constitutional status to any future Parliament of that country. That is the argument on which this is based, that a Constitution framed by a sovereign Constituent Assembly must not be easily tampered with by a future Parliament which is inferior in status to the Constituent Assembly. But unfortunately, the conditions today in India, the conditions which brought this Assembly into being, have been such that this Assembly cannot be deemed to be superior in constitutional status to a future Parliament. Why ? First of all, this Assembly was elected on a restricted franchise and then indirectly by the provincial assemblies on separate electorates. All these vitiated this Assembly *ab initio*, that is from the very beginning. The future Parliament, according to our Constitution will be elected on adult franchise, by direct election, and certainly to any constitutionally wise, sensible person it should appear obvious that a Parliament elected on adult. franchise, on a direct basis, must be superior to an Assembly elected like this, on a restricted franchise, indirectly by the provincial legislatures.

That is why in England, no Parliament binds the future Parliament so far as the amendment of the Constitution is concerned. Parliament can amend the Constitution at any time by the usual process of law making. Considering the circumstances under which our Assembly was born, for a few years at least, say five years, which Pandit Jawaharlal Nehru mentioned in his amendment, which unfortunately has not been moved, I do not see any reason why, for five years, when the transition is not complete and conditions have not settled down, when perhaps a little more foresight and deliberation might point out various flaws in the Constitution, during this period, we should not allow it to remain flexible.

Some of my friends have pointed out that if the Constitution is not flexible, if it does not respond to social change, dangers inhere in such a Constitution. I feel, Sir, that this observation is well founded. If the Constitution holds up, blocks, the future progress of our country, I dare say that the progress which has been thus retarded will be achieved by a violent revolution : revolution will take the place of evolution. When a storm breaks out, it is the flexible little plants, blades of grass that withstand the storm. They do not break because they bend, they are flexible. But the mighty trees that stand rigid break, and they are uprooted in a storm. Therefore, I fear that when a social storm is brewing, if we want to resist that storm, this is not the way to proceed about it. You must make the Constitution flexible, and able to bend to social change. If it does not bend, people will break it. That is an eventuality which, I am sure, none of us here in this House wants to envisage, that is why I say that Pandit Jawaharlal Nehru's amendment should have been incorporated in this article. But as ill-luck would have it, it has not been.

[Shri H. V. Kamath]

I do not know what the future has in store for us, if we refuse to make the Constitution a little more flexible than we are seeking to make it today.

My next amendment 3241 is a verbal one and I leave it to the collective wisdom of the Drafting Committee. Amendment No. 3242 I am not moving because I want to leave it to both the Houses, either House of Parliament, to initiate any proposal to amend the Constitution. Amendment No. 3246 also I am not moving. Amendment 3248 relates to the assent to be given by the President. This is more or less a verbal and formal amendment, and so I am content to leave it to the Drafting Committee to be dealt with at the appropriate stage. 3249 is also verbal and that also I leave to the wisemen of the Drafting Committee. 3250 refers to the period that in my opinion should elapse between the initiation of a proposal to mend the Constitution in Parliament and its final passage in Parliament. I seek to provide through this amendment 3250 that not less than six months should elapse between the initiation of a proposal and its passage through Parliament, because we are not providing for a referendum or plebiscite on an amendment to the Constitution as certain constitutions have done. The Irish Constitution has provided for a referendum before the amendment is finally incorporated in the Constitution but we have not provided for such a thing. Therefore I wish to provide a safeguard against hasty amendment to Constitution. If a period of six months is guaranteed under the Constitution between the initiation and the final passage of the Bill, then it would ensure a proper and adequate discussion in the country by the people at large. The people can voice their opinions and views upon the bill for an amendment initiated in Parliament. Six months at any rate ought to suffice.

Mr. President : The net result of your amendment is to make the Constitution more rigid.

Shri H. V. Kamath : Which one makes it more rigid, may I know, Sir?

Mr. President : 3246.

Shri H. V. Kamath : I am not moving it.

Mr. President : The net result of all your amendments was to make it rigid. You are speaking about making the amendment easy.

Shri H. V. Kamath : May I submit that I did not move it deliberately? Otherwise I would have moved it.

Mr. President : Even the ones you have moved and those you are speaking about have the tendency to make it rigid.

Shri Mahavir Tyagi: He speaks both ways.

Shri H. V. Kamath : If my Friend Mr. Tyagi thinks that I speak both ways, he is welcome to speak in more than two ways. I did not move 3246 deliberately.

Mr. President : I was only pointing out the inconsistency between your speech and the amendments you have given notice of.

Shri H. V. Kamath : You will excuse my ignorance, Sir, and my inadequate judgment.

Mr. President : 3246 you have not moved, but you moved 3250.

Shri H. V. Kamath : If I had moved 3246 you could have charged me as making it more rigid.

Mr. President : Even 3250 has the effect of delaying the amendment of the Constitution for some time.

Shri H. V. Kamath : This is only procedural.

I am now coming to the new proviso that has been embodied in the article moved by Dr. Ambedkar. The proviso has incorporated several Chapters of the Constitution which did not find a place in the earlier draft. Even the draft which reached us on the 15th September did not contain the several chapters which now have been incorporated in the provision. That is to say within two or three days the Drafting Committee has thought fit to make amendments with regard to several Chapters of the Constitution more difficult than it could have been otherwise, if the proviso had stood unchanged. Some of these chapters refer to the High Courts and Supreme Court, I do not quarrel with them—but there are certain chapters or articles dealing with relations between the Union and the States and the Constituent Units. The amendment of the Constitution regarding relations between these has been made very difficult under this new proviso which reached us only last night. That has made it incumbent upon the president not to give assent to the bill unless and until half the State Legislatures by appropriate Resolutions have approved of the amendment passed by Parliament.

Now the difficulty that arises in my mind is this. We cannot always guarantee that the unifying forces in the country—the centripetal forces—will gain ground against the centrifugal or the disruptive forces in our land. Suppose, for instance, there is need for unifying the country by a more unitary type of Constitution for the country as time goes on, and in the light of that necessity Parliament feels that certain amendments to the Constitution are needed which might vary the relations between the Union and the States, it is quite possible that a number of States faced with what they consider an inroad upon their powers, an encroachment upon their rights, many of them may become rather recalcitrant, or even otherwise they might feel that this amendment is not in their separate interest, though it might be in the interest of the country as a whole, though India as a whole may benefit by such amendment—and Parliament passes a Bill, then half the States do not approve it. What happens ? Parliament gets it back. I suggest to Dr. Ambedkar to revise this proviso so that the Amendment Bill, even if not passed by the Legislatures of not less than half of the States, if that goes back to Parliament even after being defeated in the Legislatures of the States, if it goes back to Parliament and after its defeat in the Legislatures of the States it is passed again by the Parliament, then I would request Dr. Ambedkar to change the Proviso, that in that case if it is repassed for the second time, it should prevail, the amendment of the Constitution for the second time by Parliament must prevail as against the disapproval of the States Legislatures. Otherwise, I feel that Parliament's supreme authority will be set at naught, the unifying forces of the country will be set at a disadvantage, and the centrifugal or disruptive forces of the country might gain ascendancy. I therefore, feel that even now, at this stage, it is not too late to make suitable alterations in this article so that in future it may not be said of us, of this Assembly, many years hence people may no say of us that the dead wanted to rule the living and that the Assembly that made this Constitution wanted to hold up the progress of the country. If such a situation arises in future, I fear that progress will come about, not by constitutional means, but by methods other than constitutional, and that it will pave the way for revolution which, I have no doubt, this House wishes to avoid as far as it lies in its power.

Mr. Naziruddin Ahmad : Mr. President, Sir, at this fag end of the day and at the fag end of the session I will not tire the House with a long statement. I would only submit that the rigidity which has been given to the Constitution by article 304 is very proper. The citation of the English and other Constitutions are not appropriate, because they have had long experience and they have gone through centuries of apprenticeship and they know exactly what changes

[Mr. Naziruddin Ahmad]

are to be made and what not to be made. In the initial stages of this Constitution we should rather be very strict about changing its terms.

On the amendment brought forward by Dr. Deshmukh—No. 210 I desire to offer a few comments. By this amendment, he wants to introduce a proviso to the effect that if any administrative difficulties arise, then on the report of the Supreme Court, within the period of three years, amendments should be made rather easy. I fully sympathise with his view, and I have reason to believe that many difficulties may arise in the near future. We accepted after a good deal of debate, first of all, the principles of the Constitution. Then the Draft Constitution was prepared with a good deal of expenditure and labour. Then notices of amendments to the Constitution were sent and they have been printed in two big volumes. Then the Drafting Committee has been changing its mind every day and the Draft Constitution, with the sacred principles of the Constitution, and the amendments are all given up and they are obsolete and new articles and new amendments are coming every day. I therefore easily foresee that anomalies, anachronisms and difficulties would be sure to arise from day to day. So far a period of three years, amendments of this nature, amendments to remove difficulties and anomalies should be easy, and the easy procedure indicated by Dr. Deshmukh's amendment should be accepted. The proviso may not be acceptable as it is, but the principle may be accepted and a suitable draft adopted.

We have been leaving so many things to the Drafting Committee that the Third Reading, I am afraid, would be another glorified Second Reading. In fact, questions not merely of drafting, but many substantial matters have been left to them, and some of these anomalies would occur to the Drafting Committee themselves and so they would come with amendments at the Third Reading, and that would, I am sure, lead to the reopening of many things. In these circumstances, I would submit, in view of the quick changes that we have made, from principles to principles, in the course of going back and coming forward, like a shuttlecock, we must have come across some anomalies which have not yet been apparent. I therefore submit that Dr. Deshmukh's suggestions should be considered.

Acharya Jugal Kishore (United Provinces : General): Sir, I have an amendment in my name, No. 3261, Printed List Vol. II.

Mr. President : I have not called all the amendments which are printed in the Second Volume. But if you wish to move your amendment, you can do so.

Acharya Jugal Kishore : Sir, I have amendment No. 3261 of the printed list. But this may not fit in with the amendment proposed by Dr. Ambedkar. But there is another amendment—No. 124 of Shri Brajeshwar Prasad—3rd List, 8th Week, which is an amendment to mine of 3261. 1 do not know if he has moved that amendment. If he has moved it, I would like to support it. In any case, I would like to make certain observations in connection with this. I would have liked to suggest that discussion over this article be held over. But I know your anxiety to get as many articles as possible finished and so I will not venture to make any such suggestion. Members too are very anxious to get away and the House is thin, and you can easily imagine that they are not taking much interest in what I consider to be a very important article in this Constitution.

Mr. President : I find yours is covered by Dr. Ambedkar's amendment.

Acharya Jugal Kishore : The arguments that I have to bring forward in support of my amendment are these. This is a very important Constitution.

We have passed practically most of the articles. But we were under the impression in the beginning that Pandit Jawaharlal's amendment would be moved, and that for five years at least, there will be opportunities for amending the Constitution, without the rigidity which Dr Ambedkar's proposal implies. We thought that there would be a certain amount of flexibility in the matter of amending the Constitution during the first few years. Since Pandit Jawaharlal Nehru has not moved that amendment, I would like to suggest to Dr. Ambedkar, and if he is prepared to accept my suggestion, he may agree to the proposal that the Constitution can be amended for the next five years, by a simple majority of the Parliament, and his proposal or amendment will become applicable after the first five years.

My reasons for this suggestion are these. We have passed the Constitution under very difficult political conditions. The Drafting Committee has been under very heavy pressure of work, and they have all been under political pressure and also the conditions prevailing in the country. We have been engaged in other things also. And so we have not been able to apply our minds fully to all the articles of the Constitution. and to their implications. I would therefore suggest that at least for the next five years, after knowing how the Constitution is working, the difficulties that we have to face and the shortcomings of the Constitution, we will be in a better position to amend these articles in a manner which will be easy and thereafter we can have a Constitution which will be a permanent Constitution and which can only be amended by the process suggested by Dr. Ambedkar in his amendment.

It is merely a suggestion and I hope Dr. Ambedkar will agree to accept this suggestion either in the form of an amendment as I have proposed or in the form of any other amendment which may fit in with my proposal. That is the only consideration I want to place before the House and I hope Dr. Ambedkar will see his way to accept it.

Shri Mahavir Tyagi : Sir, while considering this article we should not lose sight of the universally recognized maxim on which is based the whole conception of democratic society today—the maxim is that the, earth belongs in usufructs to all the living equally, and the dead have neither the powers nor the rights over it. From this maxim it is construed that a generation is disabled morally to bind its succeeding generations either by inflicting on them a debt or a Constitution which is not alterable. I, therefore, emphasise that a Constitution which is unalterable is practically a violence committed on the coming generations. But I do not see that our draft is absolutely unalterable. I will give credit to the Drafting Committee and also to the House that the Constitution, as we have drafted it, is complete to the smallest details. People criticise it from the point of view of its being too bulky and of its dealing in too many details. We have done a service for the coming generations with a view to facilitate their administration and their smooth running of governments by giving all the possible details we could.

The parliamentary system of Britain has practically been adopted as the basis of this Constitution. And this is for the first time that we are constituting a State on the British Parliamentary system. But then let us realise that the British parliamentary system is successful not only because it is a parliamentary system but because there is a perpetual flexibility in the Constitution which is all unwritten. Therefore they can readily adapt their Constitution to the changing circumstances that may arise along with changes both in time and space. We have adopted that very system, but have not adopted the real basis of that system—the basis that it is ever ready to be changed and ever ready to be adapted to the circumstances that the nation may face from time to time. We have not allowed that flexibility in our Constitution. It is not fair that we should deny facilities to the coming generations to change

[Shri Mahavir Tyagi]

the Constitution. The experiment is new, as some of my Friends have already hinted, the Constitution is not given by the country as a whole.

We have assumed that we are the representatives of the nation. Well, all of us have come through an indirect electorate—through the Legislative Assemblies of Provinces which had been elected when we were not free, when the British were here. Those Assemblies were elected in 1946. And we are making this Constitution in the hope and with the claim that we are the accredited representatives of India. I am afraid technically we are not the representatives of India—*de facto* we might claim to be, but *de jure* we are not.

Again, I am sorry that even as we were, in this Constituent Assembly we have not acted as independent representative—each one of us. It is the majority party of the country which has given the, Constitution. Nobody can deny it. The fact is that although we the Congress Party who are a majority in the Assembly did not act as the party in power or treated others as the Opposition, really speaking it is the Congress Party which has given this Constitution. Others have not even been heard properly. They were in a minority. So the whole of India has not been represented in this Constitution. Let us be fair about that. Let us fairly admit and confess that this is a Constitution given by one party, be it the majority party. At this time when we are sitting as judges let us confess,—whatever be the Constitution good, bad or indifferent,—it will be judged by future generations—it does not have the sanction of the country as a whole and that it is a Constitution given by a majority party in the country.

An Honourable Member : Question.

Shri Mahavir Tyagi : You might question it, but the fact remains unquestioned. Other parties had little hand in it because we know it for a fact that the amendments emanating from other quarters or from the unattached Members had no value here and were rarely accepted. So it is the Congress Party alone which has given this Constitution.

In future, parties other than the Congress Party might come into power and they might find it difficult to carry on and steer their programmes out of this Constitution which was made by persons who had a different programme. I therefore submit that we must be fair to those parties which might come into power in future, so that they might be able to make convenient changes in the Constitution, although as a member of the Congress Party myself I wish to assure the country through this House that we have always taken care that we did not act really in that prejudicial spirit of a party. But even as the case stands, it is a one party Constitution.

Supposing, after an experience of a year or two the coming generation feels that the system which we have, evolved does not actually work in their interests and the Government thus formed acts destructively against the interests of the country, then they must have an easier method to change the, Constitution to suit their whims or likings. Supposing that after experimenting with the parliamentary system for a generation or more they feel that they should bring in the American system of Presidential supremacy, or establish a Federal State I wonder if it would be possible for them to do so ?

Even this rigidity I like, particularly in the proviso which Dr. Ambedkar has wisely put. There are very important matters which he has taken under this proviso in which he says that a change in the list of the Seventh Schedule etc. will require the, sanction of more than half of the States. They are matters which are highly important; matters like justice, and fundamental rights. Now judiciary is the sole guarantee of the rights of both individuals as well

as State. Therefore, it is but fair that in the matter of bringing about a change in these important matters which guarantee security to both individuals and States, there must be sufficient rigidity. I like this proviso, howsoever strict it be.

But it is in the main body of the article that Dr. Ambedkar is too stiff. There he ought to be rather flexible. He, has been stiff all through; that is his character it seems, and his character is reflected in every article he has produced before us for consideration. He says that a change could be brought about only if an absolute majority of the House voted in its favour and two thirds of the Members present in each House voted in favour. It means that in the Lower House there must be at least 334 Members willing to make a change.

Shri T. T. Krishnamachari : I am afraid my honourable Friend is wrong. It only requires 251 Members provided they are two-thirds of the majority of those present and voting.

Shri Mahavir Tyagi : Sir, Dr. Ambedkar had rightly remarked yesterday that I was a layman; I really did not appreciate the cunnings of Law or the legal quibbles as you would call it. But then as I understand it you require an absolute majority of the House and two-thirds of the Members present voting in favour of a change. If the whole House is present then you need 334 to vote in favour, because two-thirds must vote in favour, and mathematics cannot be wrong though I might be wrong. Two-thirds of 500 is 334. Even the minority parties will come in their full strength and will make it difficult for the bigger party to implement any change howsoever important it may be, unless their number is double the number of the minority party. Absolute majority of the House I can understand, I am prepared to go so far, but to make it compulsory that even among the Members present two-thirds must vote in favour means that it will be too difficult to effect any change. I submit that some change as proposed by my Friend Dr. Deshmukh or Acharya Jugal Kishore will make it easy and enable the coming Governments to make a change if they so require. That is my point. If you do not do it, the Constitution will become too rigid. If it is not flexible, it will naturally become brittle and will break if it is hit even slightly. Do not let your Constitution become so hard as to acquire brittleness; it will break. I therefore submit, Sir, that we should provide for a convenient change in the Constitution.

Mr. President : I desire to remind Members that we propose to finish the items on the Order Paper tonight. If they would just shorten their remarks we could do it, otherwise we would require a session tomorrow which I understand most Members do not want.

Shri R. K. Sidhwa : Sir, five Members have spoken against the motion, you should give an opportunity to those who support it.

Mr. President : Dr. Ambedkar will take care of it.

Shri R. K. Sidhwa : But the Members also should express their views, Sir.

Mr. President : If the House wishes to carry on, I have no objection.

Shri R. K. Sidhwa : We will finish it tonight.

Mr. President : How can we?

Babu Ramnarayan Singh : *[Mr. President: I would not be taking much time of the House. I also desire that the business fixed for today should be completed today. However, I can assure you that the little, time I would take would not in any way dislocate the time table. The fact, on the other hand is, that it is the intention and effort of all of us that all the business be completed today,

*[……] Translation of Hindustani Speech.

[Babu Ramnarayan Singh]

Sir, there is one aspect of the problem under consideration today that obliges me to say a few words of my own. I am afraid that too many restrictions and conditions are being imposed with regard to the amendment of this Constitution by the future generations and all this is being done. I believe, under the apprehension that radical amendments may be made in this Constitution by the future generations acting under rash and irrational impulses. I would, however like to submit, that we should not entertain any such apprehension and that we should not entertain the idea that this Constitution would be radically amendment very early by the people, who will be taking our places in time to come. It is being laid down that the Constitution could be amended in future only by an absolute majority of the total membership of the House and a two-third majority of the members present and voting. Moreover in certain cases it is being provided that the amendment can be effected by a two third majority. But I fail to see the reason behind these provisions.

You may be under the impression that you are doing a nice job of it by introducing these provisions. But I feel that if I had the power to do so I would like to scrap nearly half of the provisions that have been included in this Constitution. It is the basic principle of popular Government, of democracy, that all decisions be taken by a simple majority vote. I concede that this majority should truly reflect popular opinion. But this requirement would be fulfilled if, as Dr. Deshmukh has proposed, the amendment should be effected by the President acting upon the simple majority vote of the people.

My Friend Shri Brajeshwar Prasad has made a very sound suggestion in this connection. He said that if you really desire to secure a popular verdict with regard to a proposed amendment it is no use referring the question to the Provincial Legislature for decision. The right course would be to ascertain the opinion of the people by means of a plebiscite. Such a safeguard can be appreciated. But the kind of restrictions and prohibitions that are being imposed by you on the freedom of action of the generation to come in regard to this matter, are not proper and desirable. I can say that by doing so you are doing something that is unjust to the generation to come. I had intervened in the debate to submit that this injustice should not be done to posterity. with these words Sir, I resume my seat.]

Shri R. K. Sidhwa : Mr. President, Sir, I was rather surprised that Member after Member has come here and opposed this amendment on the ground that in order to amend the Constitution there should be flexibility. I am rather surprised at that kind of an attitude. I have never seen any constitution, much less the constitution of a country, which can be played with and amended by a bare majority.

Shri Brajeshwar Prasad : May I know who pleaded for a bare majority ?

Shri R. K. Sidhwa : Mr. Tyagi stated that up to five years they want a provision that the Constitution may be amended by a bare majority. So did Mr. Jugal Kishore. Are we going to treat this Constitution which we have drawn up after so much of discussion and deliberations in such a light-hearted manner ? It was wrong of any Member to have stated that we have not given enough consideration to this Constitution and therefore something may happen tomorrow. I know this Constitution is not perfect. There may be laws in it, there may be omissions in it. But can any constitution anywhere in the world be perfect? Why, even after five years there may be flaws.

Another honourable Member stated that Members of this Assembly have not been afforded enough opportunity to express their views. It is a most incorrect statement, If anybody is liberal today in allowing the Members to

make their speeches, it is our President. He has given enough latitude to Members to express their points of view. Even germane or not germane, relevant or irrelevant speeches he has allowed and therefore to state that no opportunity is given to express their views is most unfair. Coming, Sir, to my honourable friend, Mr. Tyagi, he says that this Assembly comprises of one party. He should have stated it comprises of one majority party. But it is an admitted fact that this Assembly represents all the interests of this country and great pains have been taken to take in a good number of men who are non-Congressmen. The honourable, Member who is Chairman of the Drafting Committee and who is piloting this Constitution is a non-Congressman. Out of seven Members of the Drafting Committee, six are non-Congressmen. It is therefore an entirely wrong statement for Mr. Tyagi to make.

Shri Mahavir Tyagi : Thinking is done by the Congress Party and the Drafting Committee drafts accordingly.

Shri R. K. Sidhwa : But your sweeping remarks should be corrected. My point, therefore, is that you cannot cast a slur on the Constituent Assembly by stating that the opinions of Members are very lightly treated.

In fact I want the Constitution to be more rigid, at least this part of it. In fact I know that in certain Constitutions, a three-fourths majority is insisted upon. The Constitution which we have drawn up after so much of trouble is a great Constitution and we should be proud of it. In fact I have my own grievances in that they have not accepted many of my amendments which were reasonable. But in a democratic form of Government, we have to abide by the decision of the majority. 1, therefore, strongly support the motion moved by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, of the many amendments that have been made and the speeches made thereon, it is not possible for me to pursue every amendment and to pursue every speaker. But am going to take as a general alternative suggested by the various speakers that our Constitution should be made open for amendment by the future Parliament either by a simple majority or by a method which is much more facile than that embodied in article 304.

Sir, before I proceed to explain the provisions contained in article 304, I should like to remind the House of the provisions which are contained in other constitutions on the question of amending the Constitution. I should begin by telling the House that the Canadian Constitution does not contain any provision for the amendment of the Canadian Constitution. Although Canada today is a Dominion, is a sovereign State with all the attributes of sovereignty and the power to alter the Constitution, the Canadians have not thought it fit to introduce a clause even now permitting the Canadian Parliament to amend their Constitution. It has also to be remembered that the Canadian Constitution was forged as early as 1867 and there is not the slightest doubt about it in the mind of anybody who has read the different books on the Canadian Constitution that there has been a great deal of discontent over the various clauses in the Canadian Constitution and even on the interpretation given by the Privy Council on the provisions of the Canadian Constitution; none the less the Canadian people have not thought fit to employ to powers that have been given to them to introduce a clause relating to the amendment of the Constitution.

I come to the Irish Constitution. In the Irish Constitution there is a provision that both Houses by a simple majority may alter, or repeal any part of the Irish Constitution, provided that the decision of the Houses to amend, repeal or alter the Constitution is submitted to the people in a referendum and approved by the people by a majority.

[The Honourable Dr. B. R. Ambedkar]

Then let us take the Swiss Constitution. In that constitution too, the legislature may pass an amending Bill, but that amendment does not have any operative force unless two conditions are satisfied : one is that the majority of the cantons accept the amendment, and secondly—there is a referendum also—in the referendum the majority of the people accept the amendment. The mere passing of a Bill by the Legislature in Switzerland has no effect so far as changing the Constitution is concerned.

Let me now take the Australian Constitution. In that Constitution the provision is this: That the amendment must be passed by an absolute majority of the Australian Parliament. Then, after it has been so passed, it must be submitted to the approval of persons who are entitled to elect representatives to the Lower House of the Australian Parliament. Then again it has to be submitted to a referendum of the people or the electors. A further condition is this : that it must be accepted by a majority of the States and also by a majority of the electors.

In the United Constitution the provision is that an amendment must be accepted by two-thirds majority of both Houses subject to the fact that the decision of both Houses by two-thirds majority. must be ratified by the decision of two-thirds majority of the States in favour of the amendment. I cite these facts in order to point out that in no country to which I have made reference it is provided that the Constitution should be amended by a simple majority.

Now let me turn to the provision of our Constitution. What is it that we propose to do with regard to amendment of our Constitution ? We propose to divide the various articles of the Constitution into three categories. In one category we have placed certain articles which would be open to amendment by Parliament by a simple majority. That fact unfortunately has not been noticed by reason of the fact that mention of this matter has not been made in article 304, but in different other articles of the Constitution. Let me refer to some of them. Take for instance articles 2 and 3 which deal with the States. So far as the creation of new States is concerned or the re-constitution of existing States is concerned, this is a matter which can be done by Parliament by a simple majority. Similarly, take for example article 148-A which deals with the Upper Chambers in the provinces. Parliament has been given perfect freedom to either abolish the Upper Chambers or to create new Second Chambers in provinces which do not now have them by a simple majority. Now take article 213 which deals with the States in Part II. With regard to the constitution of the States, the draft Constitution also leaves the making of constitution of States in Part II and their modification to Parliament to be decided by a simple majority.

Again take Schedules V and VI. They are also left to be amended by Parliament by a simple majority. I can cite innumerable articles in the Constitution, such as article 255, which deals with grants and financial provisions, which leave the matter subject to law made by Parliament. The provisions are 'until Parliament otherwise provides'. Therefore in many matters—I have not had time to examine the whole of the draft Constitution and so I am only just illustrating my point—we have left things in our Constitution in a way which is capable of being amended by a simple majority. If my friends who have been persisting in the criticism that Parliament should have more extensive powers of amending or altering the Constitution by a simple majority had suggested to me a concrete case and referred to any definite article that that should also be put in that category, it would have been open to the Drafting Committee to consider the matter. Instead of that, to say that the whole

of the Constitution should be left liable to be amended by Parliament by majority is, in my judgment, too extravagant and too tall an order to be accepted by people responsible for drafting the Constitution.

Therefore, the first point which I wanted to emphasise was that it is absolutely a misconception to say that there is no article in the Constitution which could not be amended by Parliament by a simple majority. As I said, we have any number of articles in our Constitution which it would be open for Parliament to amend by a bare majority..

Now, what is it we do? We divide the articles of the Constitution under three categories. The first category is the one which consists of articles which can be amended by Parliament by a bare majority. The second set of articles are articles which require two-thirds majority. If the future Parliament wishes to amend any particular article which is not mentioned in Part III or article 304, all that is necessary for them is to have two-thirds majority. Then they can amend it.

Mr. President : Of Members present.

The Honourable Dr. B. R. Ambedkar : Yes. Now, we have no doubt put certain articles in a third category where for the purposes of amendment the mechanism is somewhat different or double. It requires two-thirds majority plus ratification by the States. I shall explain why we think that in the case of certain articles it is desirable to adopt this procedure. If Members of the House who are interested in this matter are to examine the articles that have been put under the proviso, they will find that they refer not merely to the Centre but to the relations between the Centre and the Provinces. We cannot forget the fact that while we have in a large number of cases invaded provincial autonomy, we still intend and have as a matter of fact seen to it that the federal structure of the Constitution remains fundamentally unaltered. We have by our laws given certain rights to provinces, and reserved certain rights to the Centre. We have distributed legislative authority; we have distributed executive authority and we have distributed administrative authority. Obviously to say that even those articles of the Constitution which pertain to the administrative, legislative, financial and other powers, such as the executive powers of the provinces should be made liable to alteration by the Central Parliament by two-thirds majority, without permitting the provinces or the States to have any voice, is in my judgment altogether nullifying the fundamentals of the Constitution. If my honourable Friends were to refer to the articles which are included in the proviso they will see that we have selected very few. Article 43 deals with the election of the President; article 44 deals with the manner of election of the President. It was the view of the Drafting Committee that the President while no doubt in charge of the affairs of the Centre, nonetheless was the head of the Union, and as such the provinces were as much interested in his election and in the manner of his election as the Centre. Consequently we thought that this was a proper matter to be included in that category of articles which would require ratification by the provinces.

Take article 60 and article 142. Article 60 deals with the extent of the executive authority of the Union and article 142 deals with the extent of the executive authority of the State. We have laid down in our Constitution the fundamental proposition that executive authority shall be co-existensive with legislative authority. Supposing, for instance, the Parliament has the power to make an alteration in article 60 for extending its executive authority beyond the provisions or the limit contained in article 60, it would undoubtedly undermine or limit the executive authority of the States as defined in article 142, and we therefore thought that that also was a fundamental matter and ought to require the ratification of the States.

[The Honourable Dr. B. R. Ambedkar]

Chapter IV, Part V, deals with the Supreme Court. There can be no doubt about it that Supreme Court is a court in which both the Centre and the provinces or the units and every citizen of this country are interested and it was therefore a matter which ought not to be left to be decided merely by a two-thirds majority. The same about the High Courts mentioned in Chapter VII of Part VI.

Chapter I of Part IX which is included in the third category, deals with the distribution of legislative power, and (a) deals with the lists of the Seventh Schedule. Nobody can deny that the provinces have a fundamental interest in this matter and that they should not be altered without their consent. Similarly the representation of the States in the Council of States which is dealt with in article 67.

I think honourable Members will see that the principles adopted by the Drafting Committee are unquestionable, except in, the sight of those who think that the Constitution should be liable, should be open to be amended every article of that—by a simple majority. As I said, I am not prepared to accept that position. The Constitution is a fundamental document. It is a document which defines the position and power of the three organs of the State—the executive, the judiciary and the legislature. It also defines the powers of the executive and the powers of the legislature as against the citizens, as we have done in our Chapter dealing with Fundamental Rights. In fact, the purpose of a Constitution is not merely to create the organs of the State but to limit their authority, because if no limitation was imposed upon the authority of the organs, there will be complete tyranny and complete oppression. The legislature may be free to frame any law; the executive may be, free to take any decision; and the Supreme Court may be free to give any interpretation of the law. It would result in utter chaos. Sir, I have not been able to understand when it is said that the Constitution must be made open to amendment by a bare majority. I can, applying my mind to this particular feeling, conceive of only three reasons. One is that the Drafting Committee has prepared a draft which from the drafting point of view is very bad. I can quite understand that position. If that is the thing.....

Shri Mahavir Tyagi : It is not so.

The Honourable Dr. B. R. Ambedkar : It may not be so. If it is so, I as Chairman of the Drafting Committee and I think my other colleagues of the Drafting Committee would not at all object if this Constituent Assembly were to appoint another Drafting Committee or to import a Parliamentary draftsman, submit this draft to him and ask him to suggest and find out what defects there are. That would be an honest procedure and I have no objection to it at all.

If that is not the ground on which the argument rests, then the other Ground is that this Constitution proceeds on some wrong principles. Sir, so far as this matter is concerned, it seems to me that a modem Constitution can proceed only on two bases : One base is to have a parliamentary system of government. The other base is to have a totalitarian or dictatorial form of government. If we agree that our Constitution must not be a dictatorship but must be a Constitution in which there is parliamentary democracy where government is all the time on the anvil, so to say, on its trial. responsible to the people, responsible to the judiciary, then I have no hesitation in saying that the principles embodied in this Constitution are as good as if not better than, the principles embodied in any other parliamentary constitution.

The other argument which perhaps might have been urged—I was not able to bear every Member who spoke—is that this Assembly is not a representative assembly as it has not been elected on adult suffrage, that the large mass of

the people are not represented in this Constitution. Consequently this Assembly in framing the Constitution has no right to say that this Constitution should have the finality which article 304 proposes to give it. Sir, it may be true that this Assembly is not a representative assembly in the sense that Members of this Assembly have not been elected on the basis of adult suffrage, I am prepared to accept that argument, but the further inference which is being drawn that if the Assembly had been elected on the basis of adult suffrage, it was then bound to possess greater wisdom and greater political knowledge is an inference which I utterly repudiate.

Mr. Naziruddin Ahmad : It would have been worse!

The Honourable Dr. B. R. Ambedkar : It might easily have been worse, says my Friend Mr. Naziruddin Ahmad, and I agree with him. Power and knowledge do not go together. Often times they are dissociated, and I am quite frank enough to say that this House, such as it is, has probably a greater modicum and quantum of knowledge and information than the future Parliament is likely to have. I therefore submit, Sir, that the article as proposed by the Drafting Committee is the best that could be conceived in the circumstances of the case.

Mr. President : I shall now put the amendments to vote. I will first take up the amendments moved by Mr. Kamath in the second volume of the printed amendments. The first amendment is 3239.

Mr. President : The question is :

"That before clause (1) of article 304, the following new clause be inserted and the existing clauses be renumbered accordingly :

' (1) Any provision of this Constitution may be amended, whether by way of variation, addition or repeal, in the manner provided in this article'."

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 304, for the words 'An amendment. the words 'A proposal for an amendment' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 304, for the words 'it shall be presented to the President for his assent and upon such assent being given to the Bill'. the words 'it shall upon presentation to the President, be signed by him' be substituted."

or alternatively

"That in clause (1) of article 304, for the words 'it shall be presented to the President for his assent and upon such assent being given to the Bill'. the words 'it shall upon presentation to the President, receive his assent' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (1) of article 304, the words 'to the Bill' occurring in the 11th line be deleted."

The amendment was negatived.

Mr. President : The question is:

"That before the proviso to clause (1) of article 304, the following new proviso be

[Mr. President]

inserted :—

'Provided that a period of not less than six months intervenes between the initiation of the Bill and its final passage in Parliament.' "

The amendment was negatived.

Mr. President : There was one amendment, *i.e.,* No. 3261 which was really not moved standing in the name of Acharya Jugal Kishore.

Acharya Jugal Kishore : I do not want this to be put to vote.

Mr. President : These are all the amendments on the Printed List. Then we come to the amendments in the cyclostyled Order Paper. I first take the amendments in the order in which they have been moved. The question is :

"That in amendment No. 118 of List III (Eighth Week), for the proviso to the proposed article 304, the following proviso be substituted :—

'Provided that if such amendment seeks to make any change in—

(a) article 43, article 44, article 60, article 142 or article 213A of this Constitution. or

(b) Chapter IV of Part V, Chapter VIII of Part VI, or Chapter I of Part IX of this Constitution, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.' "

The amendment was adopted.

Mr. President : The question is :

"That in amendment No. 118 of List III (Eighth Week), for the substantive part of the proposed article 304, the following be substituted :—

'304. This Constitution may be added. to or amended by, the introduction of a Bill for this purpose in either House of Parliament and passed in both Houses of Parliament by a clear majority of the total membership of each House. The provisions of the Bill shall not, however, come into force until assented to by the President.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 118 of List III (Eighth Week), in the proposed article 304, the words 'and by a majority of not less than two-thirds of the members of that House present and voting' be deleted."

The amendment was negatived.

Mr. President : The question is.

"That in amendment No. 118 of List III (Eighth Week), the following proviso be added to the proposed article 304 :—

'Provided that for a Period of 3 years from the commencement of this Constitution any amendment of the Constitution certified by the President to be not one of substance may be made by a Bill for the purpose being passed by both Houses of Parliament by a simple majority. This will, among other things, include any formal amendment recommended by a majority of the Judges of the Supreme Court on the ground of removing difficulties in the administration of the Constitution or for the purpose of carrying out the Constitution in public interest and certified by the President to be necessary and desirable."'

The amendment was negatived

Mr. President : The question is:

"That in amendment No. 118 of List III (Eighth Week), clause (a) of the proviso to the proposed article 304 be deleted."

The amendment was negatived.

Dr. P. S. Deshmukh : I beg to withdraw my other amendment No. 212.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in amendment No. 207 of List V (Eighth Week), in the proposed Proviso to article 304, for the words 'Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent' the word 'electorate' be substituted."

The amendment was negatived.

Mr. President : I think these are all the amendments. The question is

"That proposed article 304 as amended, stand part of the Constitution."

The motion was adopted.

Article 304, as amended, was added to the Constitution.

Shri Brajeshwar Prasad : Sir, now the time is seven o'clock.

Seth Govind Das : There is so much still to be done that I do not think that we shall be able to finish it. So I propose that either we should sit at nine o'clock tonight and go on till twelve o'clock or we, may sit tomorrow morning.

The Honourable Dr. B. R. Ambedkar : We have got only three articles.

Shri T. T. Krishnamachari : We have only three articles, two of which are of a formal nature.

Mr. President : I think it would be very inconvenient to adjourn now and come back again to the House. So we have to sit until we finish or we have to sit tomorrow.

The Honourable Dr. B. R. Ambedkar : We have got two or three article and I am sure they are non-contentious and it would not take even half-an-hour.

Seth Govind Das : I do not think we can finish in one hour. There is the question of the name of the country in article 1 to be settled. I do not think we shall be able to finish all these.

Mr. President : The majority of the House seems to think that we shall continue. Am I correct?

Many Honourable Members : Yes, Sir.

The Honourable Dr. B. R. Ambedkar : We can finish the thing.

Mr. Naziruddin Ahmad : It cannot be done. There is article 1 and unless the sweets are, arranged by Dr. Ambedkar, the *namkaranam* ceremony cannot be done today.

Article 99

Mr. President : Then we shall take articles 99 and 184.

The Honourable Dr. B. R. Ambedkar : Sir, I move

"That for article 99, the following article be substituted:—

99. (1) Notwithstanding anything contained in Part XIV A of this constitution but subject to the provisions of article 301 F thereof, business in Parliament shall be transacted in Hindi or in English.

Language to be used in Parliament.

Provided that the Chairman of tile Council of States or Speaker of the House of the People or person acting as such, as the case may be, may permit any member, who cannot adequately express himself in either of the languages aforesaid to address the House in his mother-tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words or in English were omitted therefrom."

May I move the other one also. This is an analogous thing.

Mr. President : I suppose the argument will be the same in respect of both.

The Honourable Dr. B. R. Ambedkar : They are substantially the same.

Mr. President : I shall put them separately to vote.

The Honourable Dr. B. R. Ambedkar : We can have one discussion. So far as the discussion is concerned, the argument will be more or less the same Sir, I move :

"That for article 184, the following article be substituted

184. (1) Notwithstanding anything contained in Part XIV A of this Constitution but subject to the provisions of article 301 F thereof, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English.

Language to be used in the Legislatures of State

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother tongue.

(2) Unless the Legislature of the State otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words 'or in English' were omitted therefrom.' "

Sir, I think no observations are necessary. The articles are very clear in themselves.

Mr. Naziruddin Ahmad : Mr. President, Sir, I beg to move:

"That with reference to amendment No. 1777 of the List of amendments (Volume 1), in clause (1) of article 99, after the word 'Hindi' the words 'or Bengali or any of the regional languages be inserted.' "

Mr. President : Mr. Naziruddin Ahmad, how do you fit in the amendment which you have read now?

Mr. Naziruddin Ahmad : This will fit in after the word 'Hindi'.

Mr. President : Yes.

Mr. Naziruddin Ahmad : Sir, I move:

"That with reference to amendment No. 2507 of the List of Amendments (Volume 1), in clause (1) of article 184, for the words 'language or languages generally used in that State', the words 'the regional language or languages of the State' be substituted."

An Honourable Member : These amendments have all lapsed.

Mr. Naziruddin Ahmad : I submit that it should be the other way. The amendment proposed by Dr. Ambedkar does not fit in with my amendments. That is the real truth. This amendment was sent long before and the Drafting Committee's amendment has come to us as a surprise. However, I should

only submit a few points. The only point is that I want the regional languages also to be used in article 99. We have already accepted the principle that Hindi should be the official language of India. That we have decided by an overwhelming majority of votes. We have also decided that the regional languages should have sufficient scope for development. I should therefore think that the regional languages should also be encouraged in the Parliament. That is the reason for my amendment. If the amendment will not fit in with the exact text of the article now proposed, It should be left to the Drafting Committee to make suitable adjustments.

With regard to my amendment to article 184, the same principle also applies. There may be one regional language or more regional languages and those regional languages should be allowed to be used in the legislatures. The point which I want to make is that the Speaker or President has much latitude in allowing any member to speak a language with which be is familiar provided he does not know the official language. It gives some discretion to the President or the Speaker to allow the use of the regional languages who may refuse to allow anyone to speak in these languages. If you do not allow the regional languages also to develop, their contribution towards the development of the official language will be very small.

Mr. President : Is that not given in the amendment as proposed now ?

Mr. Naziruddin Ahmad : I shall ask the Drafting Committee to consider that. This is only a suggestion; it should fit in somehow. I know this is only a pious sentiment on my part because it is not going to be accepted.

Pandit Lakshmi Kanta Maitra : Are you going to allow discussion on the language question ? The whole language question is coming before the House.

The Honourable Dr. B. R. Ambedkar : No, No. The whole question has been discussed and decided.

Seth Govind Das : *[Mr. President, Sir, it is a pleasure to me to have come here to support this article. No one of us has felt completely satisfied in regard to the article adopted so far in connection with the national language. But in regard to this article I do not think that is any particular difference of opinion. The articles moved so far in this House in regard to language have put one impediment or the other in the way of the early adoption, of Hindi. This is an independent article for it does not provide for consent of the President being taken nor for entrusting its work to any commission or Parliamentary Committee.

In supporting this article, I am reminded of what happened twenty-two years ago. In 1927 1 moved a resolution on this subject in the Council of State. I do not want to take your time by reading out that resolution. In it a demand was made that permission should be given to speak in the House in Hindi and Urdu together with English, but that demand was rejected. I was then twenty-eight or twenty-nine years of age. Today when I think of this incident that occurred about twenty two years ago the subsequent events that occurred during the last twenty two years come flooding into my mind; I hope that henceforth at least the Hindi speaking people and all those who can speak Hindi but who for reasons best known to them, are proud of speaking in English, after the achievement of freedom, will consider the advisability of speaking in Hindi in free India when the official language will be Hindi after the adoption of the article and in any case it would not be English. If

*[ ] Translation of Hindustani Speech.

[Seth Govind Das]

they do not do so, the Press of this country will certainly criticise them adversely for this omission. The place where Hindi can be propagated in a free way is our Parliament and I hope, that Hindi will take its rightful place in it.

In the end, I want to add that the people of this country came into contact with political movements after the assumption of leadership by Mahatma Gandhi, and if you want that they should come in contact with the proceedings of their Parliament also, it is necessary they should be conducted in a language which is understood by the majority of the people in our country. With these words I whole heartedly support these two articles moved by Dr. Ambedkar.]

Several Honourable Members : The question be now put.

Mr. President : Mr. Naziruddin Ahmad, do you wish your amendments to be put to vote?

Mr. Naziruddin Ahmad : I beg leave to withdraw them, Sir.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That for article 99, the following article be substituted :—

'99. (1) Notwithstanding anything contained in Part XIV A of this Constitution but subject to the provisions of article 301 F thereof, business in Parliament shall be transacted in Hindi or in English :

Language to be used in Parliament

Provided that the Chairman of the Council of States or Speaker of the House of the People or person acting as such, as the case may be, may permit any member, who cannot adequately express himself in either of the languages aforesaid to address the House in his mother-tongue.

(2) Unless Parliament by law otherwise, provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words 'or in English' were omitted therefrom.' "

The amendment was adopted.

Mr. President : The question is:

"That for article 184, the following article be substituted:

184. (1) Notwithstanding anything contained in Part XIV A of this Constitution but subject to the provisions of article 301 F thereof. business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English :

Language to be used in the Legislatures of States

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother-tongue.

(2) Unless the Legislature of the State otherwise provides this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words 'or in English were omitted therefrom.' "

The amendment was adopted.

Mr. President : The question is :

"That articles 99 and 184, as amended, stand part of the Constitution."

The motion was adopted.

Articles 99 and 184, as amended, were added to the Constitution.

Article 305

Mr. President : There was one article 305. 1 have omitted it by mistake. There is a proposition that we should omit it.

Shri T. T. Krishnamachari : Sir, I move:

"That article 305 be deleted."

Mr. President : This article hag become unnecessary now. The question is: "That article 305 be deleted."

The motion was adopted.

Article 305 was deleted from the Constitution.

Article 1

Mr. President : There is one more article, article 1.

The Honourable Dr. B. R. Ambedkar : Sir, I propose to move amendment No. 130 and incorporate in it my amendment No. 197 which makes a little verbal change in sub-clause (2).

Sir, I move :

"That for clauses (1) and (2) of article 1, the following clauses be substituted:—

(1) India, that is, Bharat shall be a Union of States.

(2) The States and the territories thereof shall be the States and their territories for the time being specified in Parts I, II and III of the First Schedule."

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I want to submit that this is a very important article. It does not want only the name, but it also says that it will be a Union of States. This is very objectionable. I have given notice of an amendment on which I will take at least half an hour to explain. I am opposed to this Union of States. I do not want a Union of that kind. Because, originally we had republics. We have given up that idea of republics and we have brought in the States. This is a very serious matter. It cannot be disposed of in a simple manner. I spoke to Dr. Ambedkar; he says he will finish in five minutes. He cannot do that. This is a very serious matter and in this connection I have tabled amendments from the very beginning. I have tabled an amendment even now which is printed and circulated.

Mr. President : You move an adjournment of the discussion.

Maulana Hasrat Mohani : Sir, I want an adjournment of the discussion tomorrow morning.

Honourable Members : No.

Mr. President : I will take the sense of the House. I have taken it once. I will take it again. The motion is :

"That the discussion be adjourned till tomorrow morning."

The motion was negatived.

Mr. President : Discussion will proceed. 131.

Maulana Hasrat Mohani : What about my amendment ?

Mr. President : It will come in time.

Maulana Hasrat Mohani : On a point of Order. I understand there is do quorum. Therefore this House Should be adjourned till tomorrow morning.

Mr. President : I do not know. I think under the procedure the bell has to be rung and then counting shall have to take place. Have the bell rung?

(The bells were rung.)

I think there should be counting now. Members will take their seats so that counting may proceed.

Maulana Hasrat Mohani : If you at least adjourn for half an hour, it will enable me to take my meals. I have not so far taken meals.

Mr. President : If I adjourn at all, it will be for the next session. It will be best to adjourn till the next session.

The Honourable Dr. B. R. Ambedkar : Sir, this can be finished in a short time.

Mr. President : What can we do? It is open to any Member to obstruct. Eighty-six Members are present, and under our rules one-third of the total number of Members should constitute the quorum, and that is about 97. So now, there is no quorum. I have to adjourn the House, there is no help.

An Honourable Member : Let this article go to the next session.

Another Honourable Member : We can meet tomorrow.

Another Honourable Member : There is no guarantee of quorum even tomorrow.

The Honourable Dr. B. R. Ambedkar : We can bring some Members who may be outside. The bell may be rung.

Mr. President : The position is this. Either we have to adjourn till tomorrow.....

Pandit Lakshmi Kanta Maitra : There will be no quorum tomorrow either.

An Honourable Member : We can adjourn for half an hour.

Mr. President : The suggestion is made that we adjourn for half an hour to enable Members to come.

May I make an enquiry? Adjournment is necessary now and we cannot avoid it. The question is only the time we meet next.

The first question is whether we should meet to-night, or tomorrow or leave it for the next session of the Assembly.

Sardar Huuam Singh : Sir, you cannot adjourn the House beyond three days without permission of the House, and the House now cannot give any such permission as it has no quorum.

Mr. President : Then we shall meet later to-night.

The Honourable Shri Binodanand Jha (Bihar : General) : A properly constituted House can give permission to adjourn beyond three days, but this Assembly now is not properly constituted as there is no quorum. In the absence of quorum, it cannot function. Clause (2) of rule 22 of the Rules of Procedure deals with quorum and the situation arising from want of quorum. You cannot, Sir, straightaway adjourn without the consent of this House.

Mr. President : Under rule 22 "If the Chairman on account being demanded by a Member at any time during a meeting, ascertains that one-third of the whole number of Members are not present, he shall adjourn the Assembly

or the Committee, as the case may be, for fifteen minutes, and if on a fresh count being taken alter that period it is found that there is still no quorum, he shall adjourn the Assembly or the Committee as the case may be, till the next day on which it ordinarily sits."

So we have to wait. We shall wait till eight o'clock.

(The time was ten minutes to Eight of the Clock.)

Mr. Naziruddin Ahmad : Sir, I think that fifteen minutes have passed already.

Shri Mahavir Tyagi : You cannot raise any point of order as there is no quorum in the House.

(On a count at Eight of the Clock it was found that there was still no quorum.)

Mr. President : There is no quorum, as there are only ninety-four Members present. The House stands adjourned till 9 o'clock tomorrow.

The assembly then adjourned till Nine of the Clock on Sunday, the 18th September 1949.
